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COURT OF COMMON PLEAS OF WAYNE COUNTY

COMMONWEALTH

ORIGINAL

vs.

: No. 42-1986-Criminal

STEVEN L. ROMANSKY

:

1:EV-00-1520

Excerpts of the trial held at the Wayne
County Courthouse, Honesdale, Pennsylvania, beginning
on Monday, September 15, 1986, before The Honorable
Robert J. Conway, P.J.

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I N D E XWITNESSESDIRECTCROSSREDIRECTRECROSS

TROOPER WALTER MOSCHOWSKY

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RUSSELL W. THOMAS

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1 REINHARD WAGNER, COURT CRIER: Remain seated.
2 Come to order. Court is now in session.

3 THE COURT: All right. We have the members of
4 the jury, everyone else. Parties, proceed.

5 MR. ABELN: Thank you, your Honor, for the
6 patience that you've shown.

7 I call Trooper Walter Moschowsky.

8 ---

9 TROOPER WALTER MOSCHOWSKY, called on behalf of
10 the Commonwealth, having been duly sworn, was examined and
11 testified as follows:

12 LINDA SODEN, COURT CLERK: Please state your
13 name.

14 THE WITNESS: Walter Moschowsky.

15 LINDA SODEN, COURT CLERK: Thank you. Please
16 be seated.

17 DIRECT EXAMINATION ON QUALIFICATIONS

18 BY MR. ABELN:

19 Q Trooper, spell your name for the record.

20 A M-o-s-c-h-o-w-s-k-y.

21 Q What's your occupation?

22 A Trooper, Pennsylvania State Police Fire Marshal Division

23 Q How long have you been a Trooper?

24 A Twenty-one years.

25 Q How long have you been a Fire Marshal?

Moschowsky - dir

1 A Approximately nine years.

2 Q Where are you stationed now, Trooper?

3 A Troop R, Dunmore.

4 Q As a Fire Marshal, what specialized training have you
5 in the area of fire and arson investigation?

6 A I have attended various seminars put on by the
7 Pennsylvania State Police Academy at Hershey, Pennsylvania,
8 ranging from 1969 to 1986.

9 MR. BORDEN: Excuse me. Your Honor, I am going
10 to object if the witness is testifying from some kind of note
11 that the defense has never even seen. Is that --

12 THE COURT: Yes.

13 THE WITNESS: I testified from this at the
14 hearing, your Honor, the preliminary hearing.

15 THE COURT: You want to take a look at it?

16 MR. BORDEN: Yes, please.

17 BY MR. ABELN:

18 Q Are those your qualifications listed?

19 A Yes, sir.

20 MR. BORDEN: Thank you, sir.

21 THE COURT: Proceed.

22 A In addition to those seminars, I'm also a member of the
23 Pennsylvania Association of Arson Investigators and the
24 International Association of Arson Investigators.

25 I've attended three seminars that were put on by the

Moschousky - direct

1 Pennsylvania Association of Arson Investigators. One was at
2 York College at York, Pennsylvania; one was at Boalsburg,
3 Pennsylvania; and the other one was at Penn State College --
4 State College, Pennsylvania.

5 In addition, I also attended an in depth arson fire
6 training course at The National Fire Academy in Emmitsburg,
7 Maryland.

8 BY MR. ABELN:

9 Q Have you ever acted as an instructor, yourself, sir, in
10 arson and fire investigation?

11 A I have.

12 Q Have you ever testified before as an expert in various
13 county courts across the State of Pennsylvania?

14 A I have.

15 Q How many county courts have you been declared to be an
16 expert?

17 A Four county courts, one magisterial court.

18 Q Do you receive publications from your organizations?

19 A I do.

20 Q Do you review those and keep yourself up to date and
21 abreast of new developments?

22 A Yes, I do.

23 Q Have you ever had specialized training in motor vehicle
24 fires?

25 A Yes, I have.

Moschowsky - direct

1 Q Have you had classroom and field experience in
2 observation of motor vehicle fires?

3 A Yes, I have.

4 Q Have you talked to other experts in the field about
5 vehicle fires as to cause and effect?

6 A I have.

7 Q Have you read about motor vehicle fires?

8 A I have.

9 Q How many fires have you participated in in investigating
10 as a member of the Pennsylvania State Police, approximately?

11 A I investigated approximately 600 fires.

12 Q Were the majority of them incendiary?

13 A They were.

14 Q What does incendiary mean?

15 A Deliberately set.

16 Q How many people have you prosecuted for arson charges?

17 MR. BORDEN: Objection. Irrelevant.

18 THE COURT: Sustained.

19 MR. ABELN: Your Honor, at this time I would
20 offer the Trooper as an expert in the field of fire and arson
21 investigation and an expert in determining and testifying as
22 to its cause and effect.

23 MR. BORDEN: If I could ask just a couple of
24 questions, your Honor?

25 THE COURT: Certainly.

CROSS-EXAMINATION ON QUALIFICATIONS

BY MR. BORDEN:

Q Trooper Moschowsky, you've indicated you've had specific training in motor vehicle fires. Would you tell us what that training is?

A Cause and origin on motor vehicle fires.

Q What training was that, sir? Where did you receive it?

A In addition to regular seminars, I received that training at the Penn State seminar I attended for the Pennsylvania Association of Arson Investigators.

Q When was that seminar?

A I believe 1983.

Q What portion of the seminar was devoted to motor vehicle fires? How long did that training take?

A It was an -- it was a complete afternoon session. It included classroom training as well as practical field experience on burning three vehicles.

Q Other than one-half afternoon of training on motor vehicle fires, have you received any other training in motor vehicle fires?

A I've read quite a bit of literature.

Q We'll get to that in a minute, sir. I mean as far as formal training, attending seminars, other than your one-half afternoon at Penn State in 1983, have you had any other formal education?

Moschowsky - dir

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1 A Education? To a degree, but not as in depth as that was

2 Q Okay. Let me ask the question again. Can you tell us
3 any other seminars that you attended dealing with motor vehicle
4 fires, other than the one-half day in 1983 at Penn State?

5 A A majority of all the seminars touched on some vehicle
6 fire training.

7 Q Can you tell us one?

8 A One?

9 Q Name one seminar, other than --

10 A Penn State.

11 Q -- other than the Penn State seminar in 1983.

12 A A couple of the seminars I attended at the State Police
13 Academy in Hershey.

14 Q When was that?

15 A Ranged from 1969 to 1986. There were, I believe, nine
16 seminars all tolled that I attended there, which one of the nine
17 or which three of the nine that actually presented that
18 particular phase of the instruction, I can't tell you exactly.

19 Q That training that you received between 1969 and 1986
20 was less extensive than the Penn State. Is that true?

21 A On vehicle fires that's true.

22 Q Yes, sir.

23 A That's true on vehicle fires.

24 Q You also stated that you read publications dealing with
25 motor vehicle fires. Can you tell us the names of those

1 publications?

2 A They're publications put out by the Pennsylvania
3 Association of Arson Investigators. That's a particular
4 magazine that they put out.

5 Q What's the name of the magazine, sir?

6 A Exact name I'm not sure.

7 Q You don't recall the name of --

8 A No, I don't. I receive several publications, some from
9 the barracks, some from the national, some from the
10 Pennsylvania Association of Arson Investigators.

11 Q Can you give us the name of any publication that you
12 study motor vehicle fires from?

13 A By name, no.

14 MR. BORDEN: No objection to him being used as
15 an expert.

16 MR. ABELN: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. ABELN:

19 Q Directing your attention to September 25th, 1984, Troop
20 Moschowsky, which I believe was a Tuesday morning, did you
21 have an opportunity to go to the Pennsylvania State Police
22 Barracks in Honesdale?

23 A I did.

24 Q Did you make an investigation of the area behind the
25 barracks?

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1 A I did.

2 Q What did you observe, and when did you get there?

3 A I had received a call from Sergeant Lorent, who at that
4 time was the Station Commander at Honesdale, at approximately
5 9:05 in the morning that --

6 MR. BORDEN: Objection. Hearsay.

7 MR. ABELN: Your Honor, it just goes to what
8 he did. It doesn't prove anything as to the truth of the
9 matter asserted. It's not hearsay by definition.

10 THE COURT: I don't know since he didn't answer
11 the question. Objection overruled.

12 A When I received that phone call I then proceeded to the
13 Honesdale Barracks, and I arrived there at approximately ten
14 a.m. that same morning.

15 Upon arrival at the barracks I was more or less appraised
16 of approximately what had happened, that is that a fire had
17 occurred in the back of the barracks amongst some vehicles
18 that were being stored there that were part of a stolen
19 vehicle investigation that Honesdale Barracks had going.

20 After I had learned why they were there and what
21 more or less the makeup of the scene was, I then proceeded to
22 go through these vehicles, through the rows alongside the
23 vehicles, to try to get somewhat of a picture of what might
24 have happened. While I was doing this I immediately observed
25 what appeared to me to be a flammable liquid pattern on the

1 ground around the vehicles, behind them, leading to the final
2 row, which there were three rows of vehicles, to a particular
3 vehicle, which was a white Cadillac. At that point I then
4 observed the fact that this flammable liquid pattern on the
5 ground went from the back of this vehicle further on back to
6 alongside of a house trailer, which is being used as an office
7 trailer, and it was owned by a Mr. Swenson, who at that time
8 he also owns the property on which the barracks is situated.
9 The State Police lease the building and the property from him.
10 Approximately 15 to 20 feet down alongside this trailer is
11 where this flammable liquid pattern ended.

12 Looking at the entire picture that I observed, I was
13 able to visualize that approximately 10 vehicles within
14 approximately 31 vehicles had this flammable liquid pattern
15 going around them and through the rows to the back end, back
16 to the house trailer. At the end of the flammable liquid
17 pattern on the ground there was a burnt book of matches lying
18 right on the ground in this pattern. Approximately two feet
19 from the end of the pattern there where the matches were there
20 was a plastic antifreeze container just underneath the trailer
21 lying on the ground.

22 I then went back to where the vehicles were. I now
23 observed that where the flammable liquid pattern was going
24 alongside the vehicles, these 10 vehicles had had the gas
25 caps removed from them, and they were either lying on the

1 ground or somewhere in the general area of the vehicle, itself,
2 either on a tire or on the ground, what have you. In place
3 of the gas cap there were various, what I call, wicks. What
4 they were were shirts, rags, and in one particular case a
5 plastic bag. This plastic bag and these shirts and this rag
6 were stuffed into the gas fill pipe that would lead to the
7 gasoline tank, and they hung down the side of the vehicle.

8 In addition to observing that, alongside the white
9 Cadillac, which was in the back of the third row, right in
10 the flammable liquid pattern on the ground there was a one
11 gallon metal container that was partly charred or sooted from
12 the fire, and at the same time there was a similar type one
13 gallon metal can in the back of one of the pickup trucks in
14 the center of all of these vehicles. Both cans had the same
15 appearance to them; both cans were sprayed with black paint;
16 both cans had a price mark on the top, which is written \$23
17 on brown masking tape placed on top of the can; both cans had
18 a small amount of a syrupy heavy type liquid in it.

19 I later learned that both cans were Bondo Fiberglass
20 resin cans, which is used by a lot of -- in a lot of auto
21 shops for body work.

22 In addition, the rags or the wicks that were in the
23 vehicles, along with the flammable liquid area on the ground
24 and the plastic antifreeze container that I found by the
25 office trailer, all had the same similar odor to them. Also,

1 in addition, one of the vehicles, a Bronco, that was in the
2 center of these 10 vehicles, I observed had in addition to
3 just the flammable liquid pattern around it like the other
4 vehicles, this vehicle also had something poured onto the
5 inside of it. I found the left side rear window open, and
6 there was curtains on the inside of the windows, and I could
7 smell the curtains as well as the interior of the vehicle, and
8 the curtains and the interior of the vehicle had the same odor
9 as the flammable liquid pattern on the ground and the other
10 plastic container.

11 In addition, I also observed that that particular vehicle
12 had the most severe fire damage to it. It was charred more
13 than any of the other vehicles. A total of four of the 10
14 vehicles were slightly damaged by fire.

15 I also observed that a certain area of the flammable
16 liquid pattern, itself, on the ground was charred. It had
17 burned. Some of it didn't.

18 In addition, I also observed a dump truck, which would
19 have been to the rear of these vehicles and on the Honesdale
20 side of the office trailer, and this particular dump truck I
21 later learned was also owned by Mr. Swenson, the property
22 owner, and on the ground near it was a stain on the ground in
23 the dirt, which would indicate that something had been poured
24 there. And when I had the opportunity of smelling that, it
25 also smelled the same as the flammable liquid pattern that wa

Moschowsky - dire

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1 around the cars and the vehicles.

2 From that it was quite obvious; then, to form an opinion
3 as to what had happened.

4 MR. ABELN: With your Honor's permission, may
5 I approach the witness?

6 THE COURT: Yes.

7 MR. ABELN: Will you let the record reflect
8 that I've shown these exhibits to counsel, and I'm about to
9 present this to my witness.

10 BY MR. ABELN:

11 Q Trooper Moschowsky, I'm going to show you a series of
12 photographs, and before you comment on any of the photographs,
13 I'd like you to look at that and also this. The photographs
14 are marked as Exhibits 1 through 15, and the piece of paper is
15 marked as Commonwealth's Exhibit No. 18.

16 Would you review the photographs, please, and tell me
17 whether you recognize them or not.

18 A [Witness complies.] Yes, I do.

19 Q What are those photographs, Trooper?

20 A These are photographs of the fire scene out at Honesdale
21 Barracks.

22 Q Do they accurately depict the view as you observed it
23 on September 25th, 1984?

24 A Yes, they do.

25 Q And they are accurate representations of where the cars

1 are situated and where the State Police Barracks is located?

2 A They are.

3 Q Could you look at Commonwealth's Exhibit No. 18 and tell
4 me what that is.

5 A That's a rough sketch that I made of the area so that
6 I'd have something to refer to.

7 MR. ABELN: Your Honor, I've taken the liberty
8 of Xeroxing off enough copies of that particular diagram to
9 submit to you, counsel, and the jurors. I'd ask that I be
10 allowed to distribute those at this time. I've spoken with
11 Mr. Borden about that. He said he had no objection.

12 THE COURT: Distribute them.

13 MR. ABELN: You have a copy, Mr. Borden?

14 MR. BORDEN: I do, sir.

15 MR. ABELN: Your Honor, in addition, I have
16 shown a series of photographs, and I think I said 1 through 15.
17 Yes, it is 1 through 15. I have taken the liberty of taking
18 the negatives for those photographs and have had them
19 developed into slides, and I have informed counsel of this,
20 and I understand there's no objection to me putting the slides
21 as he refers to each exhibit, 1 through 15, on the screen
22 before the jury.

23 THE COURT: All right.

24 MR. BORDEN: No objection.

25 THE COURT: Proceed.

Moschowsky - direct

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1 MR. ABELN: Thank you, your Honor.

2 BY MR. ABELN:

3 Q Is there enough light there, Trooper Moschowsky, for you
4 to see the photographs?

5 A I think I'll be all right.

6 Q Directing, sir, your attention to Commonwealth's Exhibit
7 No. 1, the first photograph on there -- pardon me. Let's go
8 back, and I ask you to indicate the purpose of your diagram on
9 Commonwealth's Exhibit No. 18. Could you explain that to the
10 jury and what that diagram represents?

11 A I drew up that diagram to sort of make the investigation
12 a little more simple as far as reference points.

13 You have on the top of the diagram you have the Route
14 191. Then you have the Pennsylvania State Police Barracks.
15 You have a parking lot behind the barracks, and you have three
16 rows of confiscated vehicles. You have the -- what I refer to
17 as the -- office trailer down at the bottom center. Off to
18 the right of that office trailer you have the dump truck I
19 referred to, and you have marked alongside the left side of
20 the truck is the stain that was on the ground.

21 Also, there's a notation there that shows where the book
22 of matches was found by the office trailer. And then looking
23 at the vehicles --

24 Q I'm sorry. Trooper, did you number each of these vehic
25 1 through 31 for your own purposes?

1 A I did.

2 Q This diagram is not drawn to scale, is it?

3 A No, it's not.

4 Explaining further, on those vehicles, the line that you
5 see going from the office trailer around vehicles 12 to 17
6 in the second row and 24 to 27 in the third row or the back
7 row there, that's the flammable liquid pattern that I observed
8 on the ground.

9 If you look closely on vehicle 25, 26, 27, 13, I believe
10 14, and 15, there is a little mark off the left rear portion
11 or the left rear corner of those vehicles. That indicates
12 where those rags were coming out of the gasoline tanks, with
13 the exception of 27. Now, 27 was the white Cadillac. There
14 the rag came out of the rear of the vehicle behind the license
15 plate. The license plate was right in the back of the vehicle,
16 and behind the license plate was the fill cap, and that's what
17 the rag came out of.

18 Q Trooper, directing your attention to photograph No. 1,
19 it's Commonwealth's Exhibit No. 1, which I have presented on
20 the screen here for the front of the jury, could you tell me
21 what that scene depicts?

22 A That's looking towards the direction of the barracks
23 from Route -- from over the top of Route 191, aerial view.

24 Q Would this be the Pennsylvania State Police Barracks?

25 A That's correct.

1 Q What would this area be back here, sir?

2 A All those vehicles are the confiscated vehicles as far
3 as these roads. Now, the one -- to try to explain it better,
4 you have the State Police Barracks there --

5 Q Excuse me, Trooper. Would it be to your advantage to
6 use the pointer when you're describing where these things are
7 rather than me?

8 MR. ABELN: Your Honor, with permission, I'd
9 ask the Trooper be allowed to step down and do so.

10 THE COURT: You may step down.

11 MR. ABELN: Can the jury see this okay? Is
12 there anything that I need to do to improve it? Do you have
13 light to see the diagram that I presented to you? All right.

14 BY MR. ABELN:

15 Q Proceed, Trooper.

16 A Route 191 would be down here. And you have a front
17 parking lot. Here's the State Police Barracks. Directly
18 behind the State Police Barracks --

19 Q Why don't you stand where I am so that the Judge can see
20 also.

21 A Directly behind the barracks you have the parking lot.
22 The first row of cars right here directly behind the barracks
23 are usually patrol vehicles.

24 Q Are those vehicles that you've indicated as patrol
25 vehicles what Trooper Golden called blue and whites?

1 A That's correct.

2 MR. BORDEN: I'm going to object because I
3 think we're -- it's going to lead to confusion.

4 This photo was not taken until the day after
5 the fire. Now, unless this witness can testify that's where
6 the vehicles were that night, then I don't want him to say
7 and here's where the patrol vehicles were.

8 I don't mind him pointing out these are patrol
9 vehicles, but this certainly isn't the scene the night of the
10 fire.

11 THE COURT: You're talking about as far as the
12 patrol vehicles is concerned?

13 MR. BORDEN: Yes, sir.

14 THE COURT: All right. I think everyone
15 understands that.

16 Proceed.

17 A In addition, the rear part of this parking lot, which
18 would be these vehicles right here, these are also either
19 private vehicles or State Police vehicles.

20 BY MR. AGEIN:

21 Q They also, as Mr. Borden pointed out, may not necessarily
22 all have been there at the time of the fire?

23 A That's correct.

24 Q What is the next row after -- I'm sorry.

25 A From here, going back, you have three rows; and these

Moschowsky - direct

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1 were all confiscated vehicles in these three rows, first row,
2 second row, third row.

3 Q Is that an accurate representation of the vehicles, the
4 confiscated vehicles, as you observed it when you went to the
5 Pennsylvania State Police Barracks that particular morning?

6 A It is.

7 Q Proceed.

8 A To the back of these confiscated vehicles is the office
9 trailer that I referred to right here. The trailer went from
10 this -- approximately this location to alongside the trailer
11 over here.

12 Q What is -- pardon me. What is the building directly
13 behind the State Police Barracks with the metal roof?

14 A That's a construction vehicle, and also there's some
15 offices in there. That's the main building for the property
16 owner, Mr. Swenson.

17 Q Now, in your diagram, Trooper, which we've marked as
18 Commonwealth's Exhibit No. 18, which you have up there, you
19 had indicated that this was not to scale. Do you have
20 knowledge from your own personal observation as to how close
21 these vehicles were to each other?

22 A Yes, I do.

23 Q What is that, sir? Could you describe that for the jury
24 please.

25 A The confiscated vehicles for the most part on an average

Moschowsky - direct

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1 side by side, were approximately two to four feet distance
2 between them. Moreover -- they're more like two feet between
3 them, side to side, the vehicles.

4 The distance between the rows, that would be between the
5 three rows here, ranged approximately five feet to ten feet
6 between vehicles.

7 The first row of vehicles here was approximately four to
8 five feet from the row of vehicles that would have been in
9 the parking lot.

10 The distance, approximately, from these vehicles to any
11 vehicle that may have been parked behind the barracks is
12 approximately 30 to 31 feet.

13 MR. BORDEN: Your Honor, I'm going to object.
14 We're getting into speculation again.

15 I don't mind if the gentleman testifies that
16 from the vehicles that were actually there, that is the
17 confiscated vehicles, to the barracks is X distance because
18 we know that, but we're speculating as to where a vehicle was
19 parked that night, so that --

20 THE COURT: Overruled.

21 BY MR. ABELN:

22 Q Go ahead, Trooper.

23 A The distance from a vehicle parked in this location to
24 the barracks is approximately eight feet.

25 MR. ABELN: Would you show the next slide,

Moschowsky - dire

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1 please.

2 BY MR. ABELN:

3 Q This would be Commonwealth's Exhibit No. 2. What does
4 that represent?

5 A That would be looking from the rear part of the barracks
6 towards Route 191.

7 Q The opposite direction from the last photo?

8 A The opposite from the last photo.

9 Q Does that photograph, again, accurately represent the
10 vehicles as they were situated on the morning of September 25th
11 1984?

12 A Confiscated vehicles, the trailer, and the truck, yes.

13 Q From this overhead view, Trooper, can you point out to
14 the jury where the fire trail is located and how it's similar
15 to your particular diagram?

16 A It ran from approximately this location here alongside
17 the office trailer down to the center rear of this vehicle,
18 which was the Cadillac, and then, of course, it went in that
19 direction, and then down through the vehicles to where it
20 connected to ten vehicles.

21 MR. ABELN: Next photograph, please.

22 BY MR. ABELN:

23 Q Commonwealth's Exhibit No. 3. What scene does that
24 depict, sir?

25 A That's a close-up shot of the area or the point of orig

Rosenbawsky - direct

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1 where the fire would have been ignited.

2 Q What's the definition of a point of origin?

3 A That's where the fire originates or starts.

4 Q How did you come to that conclusion?

5 A The target would have been these vehicles. That's where
6 the multiple trails went. The single trail went from this
7 vehicle back to this point here.

8 The purpose would have been to ignite the flammable
9 liquid at this point so that you wouldn't be in -- so that the
10 person would not be in this area. The fire would then travel
11 that's why it's called fire trail -- the fire would then travel
12 this flammable liquid to the point where it met the other
13 connections of the flammable liquid and would have just kept
14 burning until it did the purpose that it was designed to do.

15 Q Is that dark spot that you show that's seen leading to
16 the Cadillac an accurate description of the fire trail to
17 which you have just discussed?

18 A Yes, it is. It also reveals that this did burn, and this
19 is where the book of matches was found. Roughly under this
20 area of the trailer is where the plastic container was found.

21 Q Now, on the side of the trailer, was there any damage
22 to this particular trailer?

23 A Monetary damage, I would say no, but you could see where
24 there was some sooting and some char markings on the trailer.

25 Q Now, were you able to find the source of ignition to this

Moschowsky - direct

1 particular fire?

2 A My opinion, the source of ignition was the pack of
3 matches that I found approximately right in this area in the
4 flammable liquid pour.

5 Q I'm going to show you what I've marked as Commonwealth's
6 Exhibit No. 16.

7 You can put the pictures down. I'll ask you to open
8 that carefully and take a look at it, please, and identify it,
9 if you will.

10 A [Witness complies.] That's the burnt pack of matches
11 that I found in the flammable liquid trail.

12 Q What is the significance of the matches, Trooper?

13 A It indicates a source of ignition.

14 Q Are there any times when, in your professional opinion,
15 that matches could be used as a timing device?

16 A Yes, they could be.

17 Q Would you explain that to the jury, what possible ways
18 could matches be used as a timing device, and what does a
19 timing device mean?

20 A One common method of using matches as a timing device
21 would be to place a cigarette in the match pack, and then it
22 allows whoever places it there enough time to get away from
23 the area and possibly establish an alibi or what have you.
24 That would be the purpose of a timing device, and that would
25 also be one way that matches could be set up as a timing device.

Moschowsky - direct

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1 Q Is there any other ways?

2 A Not if you're talking about a flammable liquid being used.

3 Q Now, based upon your observation of the entire amount of
4 the cars and the fire lines that went out from the cars, what
5 is the actual significance of that line that leads to the
6 Cadillac?

7 A As a trailing device?

8 Q Yes. Would you explain that, please.

9 A The actual significance, as I mentioned, would be for
10 whoever would want to do this to be away from the major area
11 where the fire would finally erupt at the time after ignition.

12 Q Dealing with the matches, do you have an opinion as to
13 how the fire was started, based upon the evidence in that
14 particular scene where you gathered the evidence?

15 A Well, the matches, obviously, ignited and put -- and
16 placed in the flammable liquid area so that it would trail
17 down to the cars. So it was either one match or the whole
18 pack of matches was either ignited and placed in the trail,
19 which ignited the flammable liquid, giving the person enough
20 time to get away before it finally got down to where the
21 vehicles are.

22 Q Where did the fire trail go after it left the Cadillac?
23 And may I ask you another question before you answer that, sir?
24 What is the significance of the license plate on the Cadillac?

25 A The significance of the license plate is, like I

1 explained earlier, if you see right here there's a white
2 wool-type rag coming out of the gasoline fill pipe, which is
3 right behind the license plate.

4 MR. ABELN: Could I have photo No. 4, please?

5 BY MR. ABELN:

6 Q What is that, sir?

7 A That's a close-up of the back of the vehicle, shows the
8 wool rag coming out of the gasoline tank.

9 Q Did you observe by touching or smelling that particular
10 rag?

11 A Yes, I did.

12 Q What did you in your opinion feel that was composed of?

13 A The rag along with the rest of them, and the flammable
14 liquid pour, in my opinion, had somewhat of an odor of
15 gasoline, but it had an odor of gasoline, but yet you could
16 tell that it was either weathered gasoline or something was
17 with it because it didn't have a pure smell to it. Somewhat
18 of a --

19 MR. BORDEN: Excuse me. Don't we have a
20 laboratory report that says it's gasoline?

21 MR. ABELN: We do.

22 Your Honor, at this time I'd ask that I'd be
23 allowed to read stipulation No. 1 to the jury.

24 "It is hereby stipulated and agreed among the
25 parties that if Thomas A. Mackowitz were called as a witness,

1 he would testify that he is a Criminalist 2 employed by the
2 laboratory division of the Pennsylvania State Police. He
3 would testify that he analyzed evidence samples that were
4 given to him by Trooper Walter Moschowsky, Pennsylvania State
5 Police Fire Marshal, on September 27, 1984. He would testify
6 that the samples were several saturated T-shirts, rags, and
7 a plastic bag, grass and dirt debris from the ground, taken
8 from the fire trail, and a small sample of liquid taken from
9 a one gallon metal can. He would testify that the substance
10 was gasoline.

11 "He would also testify that he tested other
12 T-shirts or rags and a saturated curtain from the interior of
13 the defendant's Ford Bronco, and these items were shown to
14 contain a volatile substance.

15 "He would further testify that he tested a
16 small control sample of Bondo Fiberglass resin and determined
17 it also to be a volatile substance."

18 Thank you, your Honor.

19 THE COURT: All right. The same instruction
20 as the last stipulation, that is an agreement between counsel,
21 and that is to be considered a proven fact. And I think it's
22 an appropriate time that we break for the evening, and we'll
23 see you back here at nine o'clock tomorrow morning. Have a
24 good evening, and remember it's very important that you do
25 not discuss this case amongst yourselves or with anyone else

1 until all of the evidence is in as being fair to both parties.

2 Your schedule tomorrow is going to be nine
3 o'clock. We're going to break around noontime. I have
4 another matter at one o'clock, so we're going to see you in
5 the afternoon. It's going to be 1:30 to 4:30.

6 And what else? I guess this case will recess
7 until nine o'clock.

8 MR. BORDEN: Hand the sheets in, your Honor?

9 THE COURT: Yes, please. And I guess I have
10 a bail reduction hearing at 8:30.

11 Anything else, gentlemen?

12 MR. BORDEN: No, sir.

13 THE COURT: Have a good evening, everyone.

14 REINHARD WAGNER, COURT CRIER: Court will
15 adjourn till 8:30. Jury will be here at nine.

16 [Court recessed for the day.]

17 ---

18 THE COURT: Good morning.

19 MR. ABELN: Good morning.

20 MR. BORDEN: Good morning.

21 THE COURT: We have the members of the jury,
22 counsel for both sides.

23 Proceed.

24 MR. ABELN: Your Honor, with the Court's
25 permission, I'd like to distribute the chart that was prepared

1 by Mr. Moschowsky to the jury.

2 Good morning, ladies and gentlemen.

3 Recall Trooper Moschowsky.

4

5 TROOPER WALTER MOSCHOWSKY, recalled, having
6 been previously duly sworn, was examined and testified as
7 follows:

8 MR. ABELN: Trooper, instead of taking the
9 stand, I'd ask you to return to the screen, and I'll give you
10 the pointer that I had; and here, sir, are the pictures that
11 we've marked as exhibits.

12 THE COURT: Want to hit the lights?

13 MR. ABELN: I wonder if you could keep that
14 front light on?

15 MR. BORDEN: I can't see the ground.

16 MR. ABELN: You have to turn it off.

17 BY MR. ABELN:

18 Q Trooper Moschowsky, I'll remind you that you're still
19 under oath to tell the truth, and I believe we left off
20 yesterday in photo -- in Commonwealth's Exhibit No. 4.

21 MR. ABELN: Let's go to the next slide.

22 BY MR. ABELN:

23 Q Trooper, what, if anything, was found by this particular
24 Cadillac?

25 A Right below the left door is where that one gallon

1 Bondo can was located, right here in the trail.

2 MR. ABELN: Go to the next photo, please.

3 BY MR. ABELN:

4 Q What does this photo represent? This is Commonwealth's
5 Exhibit No. 6.

6 A This truck here is vehicle 26 on the diagram, which
7 would be the left side of the Cadillac. It indicates that the
8 trail came from the direction of the Cadillac back behind his
9 vehicle, down alongside and in between those two trucks there.

10 Q What is the vehicle that's directly in front of that
11 particular truck?

12 A That would be vehicle No. 14 on the diagram. That's
13 the one that received the most damage.

14 Q Did you find out through your investigation who that
15 truck belonged to?

16 A Yes, I did.

17 Q Who was that?

18 A The defendant.

19 MR. ABELN: Go ahead to the next photograph.

20 BY MR. ABELN:

21 Q What is the significance of that picture?

22 A That's the same vehicle, showing the close-up of the
23 rag coming out of the gasoline tank.

24 Q Does it exhibit a fire trail?

25 A It also has a trail going along the left side of it.

1 MR. ABELN: Next, please.

2 BY MR. ABELN:

3 Q Commonwealth's Exhibit No. 6.

4 A That's vehicle No. 25 on the diagram, which would be to
5 the left of the previous vehicle that was just shown. It also
6 shows a flammable liquid trail alongside, which also indicates
7 that it was burning, and also the rag coming out of the
8 gasoline tank.

9 MR. ABELN: Go to the next one.

10 A That's the same vehicle, looking at it from the front
11 towards the back, the trail going alongside of it, and the
12 rag coming out of the gasoline tank.

13 MR. ABELN: Go to the next picture, please.

14 BY MR. ABELN:

15 Q This, I believe, is Commonwealth's Exhibit No. 8. Is
16 that correct?

17 A Ten.

18 Q Ten? Sorry.

19 A This is Exhibit 10. This would be vehicle No. 15 on
20 the diagram, which would have been directly in front of the
21 Cadillac, and directly to the right of vehicle 14, the
22 defendant's vehicle. This also reveals the rag coming out of
23 the gasoline tank, the flammable liquid pattern on the ground.

24 MR. ABELN: Go to the next picture.

25 BY MR. ABELN:

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1 Q Now, what does this picture represent? This is B.

2 A This is the back end of vehicle No. 14 on the diagram,
3 which would have been the defendant's vehicle. It indicates
4 a flammable liquid pattern behind -- this particular photograph
5 or slide shows the flammable liquid behind the vehicle.

6 Q Is that Commonwealth's Exhibit No. 12, sir?

7 A Eleven.

8 Q Eleven. That's right.

9 MR. ABELN: Go to the -- Commonwealth's Exhibit
10 No. 12.

11 A That's the same vehicle. This shows the amount of fire
12 damage in and around the gasoline tank coming up the side, and
13 the flammable liquid trail on the ground.

14 This particular vehicle here I wasn't able to get the rag
15 from the gasoline tank because it had been consumed, and it was
16 just charred remains, and as soon as I touched it what was left
17 here fell into the gasoline tank and the rest fell on the
18 ground, and it was just all charred up.

19 MR. BORDEN: What vehicle number was that, sir?

20 MR. ABELN: Fourteen on the chart. Commonwealth's
21 Exhibit No. 12.

22 BY MR. ABELN:

23 Q Did you have an opportunity to take a look at that vehicle
24 in detail, Trooper?

25 A Yes, I did.

1 Q Would you tell the jury what you observed in addition
2 to that --

3 A In addition to what I mentioned here already, this
4 vehicle here had the left rear side window open, and this is
5 the one that had the curtains inside. This vehicle is also
6 the one that appeared to have a flammable liquid poured also
7 on the inside of it.

8 Q Was that one of the curtains that was submitted to the
9 chemist that we stipulated to yesterday as containing a
10 volatile substance?

11 A That's correct.

12 Q What's the significance of a window being open?

13 A Well, one of the significances would have been had the
14 flammable liquid caught fire inside the open window would have
15 supplied enough oxygen to sustain combustion.

16 Q Do you know the condition of the door when you arrived?

17 A I believe the door was shut.

18 Q Was it locked or unlocked?

19 A I'm not sure about that.

20 Q Now, the vehicle that was directly next to this
21 particular vehicle, which would be vehicle 13 on your chart,
22 in your diagram you have a little mark on the bottom of
23 vehicle No. 13. Would you tell the jury what the significance
24 of that is.

25 A Do you want to go to the next slide? The next slide is

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1 vehicle No. 13.

2 MR. ABELN: Go ahead.

3 A This is vehicle No. 13 on the chart. Exhibit 13, also.

4 The significance of this vehicle, this one here would
5 have been to the left side of the defendant's vehicle. It had
6 the flammable liquid trail on the ground.

7 Now, this particular vehicle had a plastic bag as a wick
8 coming out of the gasoline tank. Further, this here particula
9 vehicle is the one that I found the other one gallon Bondo can
10 in the back end of this truck, this vehicle.

11 MR. ABELN: Did you see these?

12 MR. BORDEN: I sure have.

13 BY MR. ABELN:

14 Q Trooper, I'm going to show you what I've marked as
15 Commonwealth's Exhibit No. 17 and Commonwealth's Exhibit No. 1
16 and ask you to identify those, please.

17 A Seventeen is the can that I found the flammable liquid
18 trail on the ground alongside the Cadillac. Nineteen is the
19 can that I found in the back of this vehicle here.

20 Q Was that the vehicle next to the defendant's vehicle?

21 A Yes, it is -- was.

22 MR. ABELN: Go to the next exhibit.

23 BY MR. ABELN:

24 Q This would be Commonwealth's Exhibit No. 14.

25 A This is the same vehicle as the previous slide. This

1 shows a little more distinctly the flammable liquid pattern on
2 the ground behind the vehicle and then going down the left
3 side of the vehicle.

4 MR. ABELN: Next exhibit, please.

5 BY MR. ABELN:

6 Q Now, finally, Trooper, what is Commonwealth's Exhibit
7 No. 15?

8 A That's another overall aerial shot of the scene, looking
9 from the -- which would have been the right side of the
10 barracks or looking towards Honesdale.

11 Q Does that represent an accurate description of the
12 vehicles as they were the day that you arrived from that
13 particular point?

14 A Yes, with regard to the confiscated vehicles, the trailer
15 and these vehicles back in this here area.

16 Q Does that accurately represent the distances between
17 each vehicle, as well?

18 A Yes, it does.

19 Q Trooper, directing your attention to the gas caps that
20 were found at the scene, did anyone make a test for finger-
21 prints of those particular gas caps and the other objects
22 that you had?

23 A Trooper Francis Zanin of the State Police in Dunmore.

24 MR. ABELN: Your honor, at this time I'd like
25 to read the final stipulation that counsel and I have entered

1 into.

2 "It's hereby stipulated and agreed among the
3 parties that Trooper Francis E. Zenin [Z-a-n-i-n], a
4 Pennsylvania State Police fingerprint examiner, processed
5 seven gas caps that had been removed from the vehicles, one
6 red plastic antifreeze container, two blue one gallon metal
7 cans, Bondo Fiberglass resin cans, and a partially burnt
8 match book. He would testify that no fingerprints were found
9 on any of these items, but on one of the metal cans was
10 developed what appeared to be the marking of a design used on
11 Playtex rubber gloves. On the other can was developed fabric
12 ribbing."

13 THE COURT: Same instruction as the last two,
14 both counsel have agreed to that stipulation, so you should
15 consider that as a fact.

16 BY MR. ABELN:

17 Q Trooper, what's the significance of the marking of the
18 design used on Playtex rubber gloves?

19 A That was obviously an indication that whoever handled
20 these cans at one time wore rubber gloves.

21 Q What about the term developed fabric ribbing?

22 A The only significance I can place on that would be the
23 fact that obviously this can was up against some piece of
24 material and it adhered to the can for some reason.

25 Q Could that have been a cloth glove?

1 A Any type of material.

2 Q Could it have been a shirt?

3 A From the description, I would say yes.

4 Q When you arrived at the barracks were you able to
5 determine whether or not this particular arson scene had
6 remained intact from the time it had been discovered, or was
7 evidence moved around?

8 A It was my understanding that everything was as it was at
9 the time of the fire.

10 Q What was your estimate, based upon your professional
11 opinion, of the time that this fire actually occurred?

12 A I estimated the time of the fire was between midnight
13 and 7:30 a.m.

14 Q Were you able to determine the maximum amount of time
15 the fire actually burned from the minimum to a maximum?

16 A It was my opinion that I would say the fire probably
17 burned, from the amount of damage, maybe possibly for around
18 20 minutes.

19 Q How would you describe this fire in terms of definition?

20 A My conclusion upon the investigation was that this fire
21 was of incendiary origin.

22 Q Now, do you have an opinion as to where the gasoline can
23 came from that was used to start this fire?

24 A The gasoline can?

25 Q No, the gasoline came from. Did I say can? I'm sorry.

Moschowsky - direct

1 Where the gasoline came from that was used to start the
2 fire, based upon the evidence that you saw.

3 A It would be my opinion that the gasoline could have
4 either been brought to the scene or could have been acquired
5 from possibly that dump truck at the scene already. However,
6 I believe that the gasoline was probably carried amongst the
7 vehicles in either one or both of these two cans, as well as
8 the plastic container I had mentioned earlier that was found
9 alongside of the trailer -- office trailer.

10 Q Now, Trooper, would you describe the building of the
11 Pennsylvania State Police Barracks from the rear side of this
12 particular building?

13 A The building is mainly brick veneer. The gables are
14 wood frame constructed, and the roof is an asphalt shingle
15 construction.

16 Q Is there anything flammable located by the entrance?
17 And where is the entrance on this particular slide?

18 A The entrance is right at this location here. The door
19 is a complete glass-type door. To the right of the entrance
20 there are two propane -- large propane tanks or containers.

21 MR. BORDEN: Excuse me. Is this as of that
22 date?

23 MR. ABELN: [Nodding affirmatively.]

24 BY MR. ABELN:

25 Q You state in your opinion that this fire was of

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1 incendiary origin and it was an arson. What was the intent
2 of this arson, in your opinion?

3 A The fact that the nucleus or center of these vehicles
4 was physically trailed with a flammable liquid, it's my opinion
5 that the intent was to completely destroy all of those vehicles

6 Q Now, only 10 of the 31 actually had wicks in it and fire
7 trails to it. Is that correct?

8 A That's correct.

9 Q If the 10 vehicles that the fire trails led to had
10 caught on fire completely, what would have happened to the
11 other 21 vehicles?

12 MR. BORDEN: Objection. Basis of the objection
13 is it calls for a hypothetical. You have a hypothetical
14 question, it is necessary that there be facts in evidence.

15 There has been no evidence presented to this
16 point or an offer of proof that those vehicles caught fire,
17 would have, or could have caught fire. As a result, the
18 hypothetical question is improper.

19 THE COURT: Overruled.

20 Answer the question.

21 BY MR. ABELN:

22 Q Answer the question.

23 A Would you rephrase the question again?

24 MR. ABELN: Would you repeat, please?

25 [The following question was read by the reporter.]

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1 "Q If the 10 vehicles that the fire trails led to had
2 caught on fire completely, what would have happened to the
3 other 21 vehicles?"]

4 A Because of the close proximity of all the vehicles that
5 were parked there, there's no doubt in my mind that if not all
6 the majority of them eventually would have caught fire.

7 BY MR. ABELN:

8 Q Directing your attention to the vehicles that are parked
9 in front, those are not necessarily the vehicles that were
10 there at the day of the fire.

11 A That's correct.

12 Q If there had been vehicles parked there, in your opinion
13 what would have happened to them had all 31 cars gone up in
14 flames?

15 MR. BORDEN: Objection. Same objection I
16 registered before. In addition, I would say it calls for
17 speculation.

18 THE COURT: Sustained.

19 BY MR. ABELN:

20 Q Do you have an opinion, Trooper Moschowsky, as to why
21 only 10 of the vehicles were targeted by this arsonist?

22 A My opinion is probably for a couple of reasons: One is
23 that trailing the nucleus of all of these vehicles would have
24 been sufficient. There would have been no reason to have to
25 trail all of them.

1 Secondly, to trail all of them would require, number one,
2 more flammable liquid; and number two, the possibility of
3 being observed or detected would be there because you'd have
4 to be there for a longer period of time by the time you
5 trailed all those vehicles.

6 Q Did you actually walk behind the vehicles and between
7 the trailer that's exhibited on this photograph?

8 A The office trailer?

9 Q Right.

10 A I walked all this area here, along here, all the way
11 around this building here, this entire area.

12 Q Between the trailer and the vehicles, are you able to
13 see the State Police Barracks if you're kneeling down?

14 A This location?

15 Q Right.

16 A If you were kneeling down, could you see the State Police
17 Barracks?

18 Q Yes.

19 A I'd say you probably could see at least the roof, if
20 nothing else.

21 Q Now, you had testified as to the condition of the
22 defendant's vehicle, the Bronco, in this case. Do you have an
23 opinion as to that particular vehicle and its role in this
24 arson?

25 A Just from what the evidence revealed, for some reason

1 that particular vehicle was targeted more than any of the
2 other vehicles in that there was flammable liquid placed
3 inside of it as well as around it and alongside of it.

4 Q Now, Trooper, through your training and experience, is
5 there any significant difference between a vehicle fire of a
6 vehicle with the gas cap on as opposed to a vehicle fire with
7 the gas cap off?

8 MR. BORDEN: I'm going to object. I believe
9 that the testimony has indicated that all of the targeted
10 vehicles had the gas caps removed. Therefore, I don't even
11 see how it's relevant, sir.

12 THE COURT: Overruled. There's also testimony
13 that the rest had the gas caps on, and that all or some of
14 them could have gone up.

15 Answer the question.

16 A The significance there is, as I already pointed out,
17 some vehicles did have caps on, but 10 did not.

18 With the cap on the gas tank there is more possibility
19 of an explosion taking place of the gasoline tank, itself.

20 BY MR. ABELN:

21 Q Trooper, in your experience as an arson investigator
22 and through your training, have you ever seen the results of
23 a closed or sealed gas container after it had been involved
24 in a fire?

25 A I have.

1 Q What is that? Could you describe that to the jury?

2 A I've observed cans in structure fires with gas -- that
3 had gasoline in them. With the cap on the gasoline can, what
4 would happen was the can would either shatter like a piece of
5 shrapnel or else it would just completely bulge right out,
6 whereas the cans without any caps on them revealed very little
7 or no damage at all to them.

8 Q Trooper, if all 31 of these vehicles had gone up in
9 flames or exploded, in your professional opinion, had there
10 been someone in close proximity to the fire, what would have
11 been the result to that particular person?

12 MR. BORDEN: Objection, sir. Same basis.

13 Hypothetical question. There's been no evidence whatsoever
14 that any of these vehicles would have gone up, and without that
15 basis we don't see how he can answer that question.

16 THE COURT: Overruled.

17 A It's my opinion that had all or the majority of them
18 vehicles been engulfed in fire as the intent was so designed,
19 that anyone within a close proximity of that area could have
20 seriously been injured.

21 BY MR. ABELN:

22 Q In your professional opinion, what would be the risk
23 danger to the Pennsylvania State Police Barracks as indicated
24 in this particular photograph had all of those vehicles ignited
25 and gone up in flames or exploded?

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1 MR. BORDEN: Please note the same objection.

2 A Same as I said about the person. Had all or the
3 majority of these vehicles been engulfed in flames, that would
4 have been somewhat of a major fire, especially with all the
5 flammable liquid that was present, at which time, again,
6 there's no doubt in my mind that the State Police Barracks,
7 as well as this office trailer over here, could have been
8 damaged.

9 MR. ABELN: Cross-examine.

10 THE COURT: Take the stand.

11 THE WITNESS: [Witness complies.]

12 CROSS-EXAMINATION

13 BY MR. BORDEN:

14 Q Trooper Moschowsky, as I understand your testimony, you
15 arrived at the scene on the morning of September 25th. Is
16 that correct?

17 A That's correct.

18 Q When you arrived at the scene the scene was basically
19 intact from the fire scene that was reported. Is that correct?

20 A That's correct.

21 Q I want to make sure that this jury understands the scene.
22 What I'm going to do, I'm going to draw the State Police
23 Barracks, recognizing nothing is to scale, and I want you to
24 describe that building for the jury. What's it made out of?

25 A It's a brick veneer building.

1 Q When you say veneer --

2 A Outside of the building is brick.

3 Q So the side that would be facing the cars, if the cars
4 were down here, is made of brick. Is that accurate?

5 A To a point that's correct. The majority of that side
6 facing the fire would have been brick or was brick.

7 Q What was the roof made of, sir?

8 A The roof was asphalt, shingling, and the gable over the
9 doorway, which would also have been facing the cars, was wood
10 constructed.

11 Q Would you agree with me that this building was fairly new?

12 A Correct.

13 Q The building was less than ten years old?

14 A I'm not exactly sure when it was built. I'd say probably
15 around that time.

16 Q How many entrances are there to that building, sir?

17 A I believe four.

18 Q Can you tell us where they are?

19 A One would be, as you're looking at the building, it would
20 be on the rear side to the left.

21 Q Here, sir?

22 MR. ABELN: Your Honor, if I may interrupt and
23 make an objection, I'd like to ask counsel if I could give
24 these photographs to the Trooper, so he could be accurate in
25 his description of the building?

1 MR. BORDEN: If he can't remember, then I would
2 agree to that, but if the man has testified that he's familiar
3 with the scene --

4 MR. ABELN: I understand.

5 BY MR. BORDEN:

6 Q Here, sir?

7 A Indicating the top of where you have your hand now, let's
8 assume that's the front of the building.

9 Q Correct. The road will be the top of the blackboard.

10 A There is one door right there. I believe that's for the
11 driver examiner's unit. On the left side would have been, I
12 believe, overhead doors or some sort of a door.

13 Q Here, sir?

14 A Some place on the side. To the back --

15 Q Here?

16 A Right about there would have been the glass door I
17 described or the entrance into the parking lot. And on the
18 right, I'd say probably about the middle of the building is --
19 I believe that's the main entrance.

20 Q So there are four entrances to this building, correct?

21 A I believe so, yes.

22 Q Is the barracks equipped with a sprinkler system?

23 A It's my understanding it's not.

24 Q Is the barracks equipped with smoke detectors?

25 A As far as -- again, it's my understanding that the

1 building doesn't have any smoke detectors.

2 Q As part of --

3 A I don't know definitely, but I believe that.

4 Q As part of your investigation, making a determination as
5 to whether this building would catch on fire, did you check
6 to see if they had a sprinkler system?

7 A The building, itself, wasn't involved in the fire at the
8 time, so there would be no reason.

9 Q That's my point. You didn't check to see if there was a
10 sprinkler system, did you?

11 A I had asked, and the party I asked told me that there
12 wasn't.

13 Q I don't want to get involved in a semantical problem
14 here. My question is did you inspect the building to see if
15 there was a sprinkler system?

16 A Physically inspect it, no.

17 Q Did you physically inspect the building to see if there
18 was a smoke detector system?

19 A No.

20 Q Did you physically inspect the building to see if there
21 were any fire extinguishers and where they were located?

22 A I know there are fire extinguishers, but I don't know
23 exactly where they're located in the building.

24 Q So you do know that there are fire extinguishers?

25 A That's correct.

1 Q Now, from your investigation, there was no accelerant
2 or fire trail around this building, was there?

3 A That's correct.

4 Q Immediately adjacent to the barracks is a parking lot,
5 is there not?

6 A In the rear. That's correct.

7 Q Would you tell the jury what that parking lot is made
8 out of?

9 A Macadam, blacktop.

10 Q Did your investigation indicate there was any accelerant
11 or flammable liquid placed in the parking lot area?

12 A I didn't detect any, no.

13 Q Would you tell the jury the length of the parking lot,
14 that is the distance between the building and the end of the
15 macadam?

16 A Approximately 50 feet.

17 Q Next to the parking lot is a field area. Is that correct?

18 A To the rear of the parking lot, that's correct.

19 Q That's where these confiscated automobiles were parked.
20 Is that correct?

21 A That's correct.

22 Q I believe that you testified they were parked in three
23 rows. Is that accurate?

24 A That's correct.

25 Q The X's on the blackboard are going to represent the

1 first row of vehicles. Was there any accelerant placed between
2 the end of the macadam and the first row of vehicles?

3 A No.

4 Q Can you give me the distance between the end of the
5 macadam and the bumper of the first vehicle?

6 A Approximately four to five feet.

7 Q Then we have a second row of vehicles. Is that accurate
8 sir?

9 A That's correct.

10 Q Was there any accelerant placed in this area, that is
11 the row between the first and second vehicles?

12 A Not that I detected, no.

13 Q It's only when we hit the second row of vehicles that we
14 run into the fire trails that you've described for us. Is
15 that accurate?

16 A That's correct.

17 Q Can you give me the distance between the first row and
18 the second row of vehicles, approximately?

19 A I believe between seven, nine feet.

20 Q Eight? Would that be a fair --

21 A Eight. About eight feet.

22 Q On the map that you provided to the jury, if we would
23 call this vehicle 13, 14, et cetera, et cetera, can you give
24 me the distance from vehicle 14 to the barracks?

25 A Approximately 60, 65 feet.

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1 Q If I told you --

2 A I'd say even a little more than that. Let's see, 50 --
3 probably between 70 and 75 feet.

4 Q You're saying the distance from here to here is 75 feet?

5 A Approximately. Maybe a little more.

6 Q If I told you it was over a hundred feet, would you
7 disagree with me?

8 A I don't know if I'd disagree with you. I'd have to sit
9 down and actually calculate the length of the cars and every-
10 thing else. Seventy-five to a hundred feet? I'd say 75 feet
11 or more. I'm not saying you're wrong at a hundred feet, no.

12 Q If I told you the exact distance was 104 feet, would you
13 agree with me?

14 MR. ABELN: He already answered the question.
15 Your Honor, I object.

16 BY MR. BORDEN:

17 Q A hundred and four feet to the building?

18 THE COURT: Sustained.

19 A I wouldn't disagree.

20 BY MR. BORDEN:

21 Q When you went out there and conducted your investigation
22 did you do these measurements?

23 A At that time?

24 Q Yes.

25 A No.

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1 Q The reason you didn't conduct any measurements at that
2 time is because you felt that there was really no threat to
3 the barracks whatsoever and there was no need to do any of
4 these measurements, isn't that correct?

5 A That's not correct.

6 Q Have you subsequently done measurements?

7 A Yes.

8 Q When?

9 A The other day. Two days ago.

10 Q Two days ago? That's the first time that you did
11 measurements?

12 A With a tape measure. I approximated prior to that.

13 Q Am I correct that this fire occurred in September of 1984
14 September 25th?

15 A That's correct.

16 Q And today's date is September 16, 1986?

17 A That's correct.

18 Q So it wasn't until almost two years after this fire that
19 you went back and did these measurements? Is that accurate?

20 A With a tape measure.

21 Q Right. Is that correct?

22 A It's accurate. With a tape measure, that's correct.

23 Q You went back, and you did it with a tape measure two
24 years later, and it's your testimony you're not sure what this
25 distance is?

1 A I could sit down, I could right now figure it out and
2 tell you approximately what the distance is.

3 Q When you measured it with the tape did you write it
4 down, sir?

5 A I didn't give a total distance. I did write it down.

6 I can add them up -- I measured from the building to
7 the first row of cars, and from those vehicles across the
8 macadam, then to the vehicles, the private vehicles, that would
9 have been at the edge of the macadam. I measured from there
10 to the first row of vehicles, and then between the rows of
11 vehicles. I did not take one complete measurement from the
12 barracks to any particular vehicle within that group of
13 vehicles.

14 Q I'm going to put in a third row of cars. It is this
15 area in here where you began to discover a fire trail, is that
16 accurate, behind this second row?

17 A That's correct, and also alongside leading to the front
18 of those vehicles.

19 Q I want the jury to get a perspective of distance. From
20 that wall to that wall, if I told you it was 50 feet, would you
21 disagree with me?

22 A No.

23 Q So if that were the back of the barracks, according to
24 your testimony, this entire thing would be macadam parking lot
25 Is that accurate?

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1 A Not quite.

2 Q How is it inaccurate, sir?

3 A You're estimating the distance from the building to the
4 edge of the macadam.

5 Q Correct.

6 A The macadam does not go right to the building.

7 Q How far away does it go?

8 A I'd say within eight feet of the building.

9 Q If the wall were the barracks, there would be a space of
10 eight feet and then the parking lot would start, and we would
11 keep walking, correct?

12 A That's correct.

13 Q To the end of the parking lot, which would be that wall.
14 Is that accurate?

15 A Correct.

16 Q If the second row of cars where the fire trails were
17 were a hundred feet, it would be twice the length of this room
18 where that fire would be. Is that correct?

19 A That's correct.

20 Q You came up with a map that the jury now has in their
21 hands. Is that accurate?

22 A Rough sketch. That's correct.

23 Q That's not to scale?

24 A No, it's not.

25 Q The distances between the cars -- have you got your map

1 there?

2 A Yes, I do.

3 Q The distances between the cars 13, 14, 15, about, I
4 think that you testified, and correct me if I'm wrong, is
5 about four feet?

6 A Two to four feet.

7 Q Two to four feet? If you take a ruler and you put it
8 and you measure it the distance between the cars, what it
9 actually comes up to, comes to about a quarter of an inch on
10 your map, and I'm going to give you a ruler so you have the
11 opportunity to check to make sure that's correct.

12 A Pretty close. A little bigger.

13 Q It is a little bigger, but I'm going to go with a
14 quarter of an inch.

15 If a quarter of an inch is approximately four feet, an
16 inch is 16 feet. Do you agree with me?

17 A I'd agree.

18 Q If I take your map and I measure off a hundred feet from
19 the second row, and you can feel free to do so, it comes out
20 to six and a half inches.

21 To make your map in somewhat -- some degree of
22 perspective, the State Police barracks is not down here, but
23 is up here. Is that accurate? Feel free to measure it.

24 A Looking at what you're trying to say there, I mean,
25 that's possible. That's possible. Everything is smaller.

1 Nothing is to scale. I have the rows exactly even, which they
2 weren't. I have the cars -- if you look at this, the cars are
3 really further apart than it would give the impression.

4 Like I say, it's just a rough scale. It's not drawn to
5 scale. It's just a rough sketch. I did not draw it to scale.

6 Q My point, Trooper, is that where you indicate the police
7 State Police building -- the barracks -- the distance, the
8 actual distance is at least one and a half times the size of
9 this room, if not over twice the size of this room. Is that
10 correct, sir?

11 A That's correct. On a rough sketch drawing, I'd say
12 probably the barracks should have been probably about the top
13 of the paper there.

14 Q Now, you testified about cars being in the parking lot
15 area. That's cars that were parked during the evening and
16 morning hours, I think you testified to marked vehicles,
17 things like this?

18 A That's correct.

19 Q Yet I look at your diagram, and none of those cars
20 appear. Is that accurate?

21 A That's correct.

22 Q Once again, isn't the reason that you didn't put any of
23 these cars in here is because when you examined the fire you
24 didn't view that they were in any danger either? Isn't that
25 true?

1 A No, that's not true. I just didn't put them on there.

2 Q Just didn't put them on?

3 A One of the reasons I didn't put them on there, to be
4 accurate, is because I don't know what particular vehicles were
5 there at the time of the fire.

6 Q Exactly. You were testifying in this case about the
7 spread of a fire, and yet you don't even know what vehicles
8 were located in that parking lot on that night. Isn't that
9 true, Trooper?

10 A I don't know which ones. I know there were vehicles
11 there, though.

12 Q You don't know how many?

13 A I don't know how many.

14 Q You don't know how much gas was in their tanks?

15 A No.

16 Q You don't know if the windows were open or closed?

17 A I can assume they were closed.

18 Q You can assume all you want, sir. You didn't make any
19 determination as to what vehicles were located behind that
20 barracks that particular night, isn't that correct?

21 A That's correct.

22 Q At the scene the next morning you discovered various
23 rags and shirts. Is that correct?

24 A That's correct.

25 Q Would you describe those for the jury?

1 A In detail?

2 Q Yes, sir.

3 A I'll have to refer to my report.

4 Q Feel free.

5 Let me make it easier for you --

6 A The vehicle that --

7 Q I'm sorry.

8 A I have it marked. The vehicle No. 15 had a green cotton
9 pullover shirt, three button, open collar, short sleeves, the
10 name, quote, Cross Creek, end quote, on the neck tag along with
11 the size medium.

12 Q Okay.

13 A Vehicle No. 25, a blue terrycloth pullover shirt, open
14 neck, short sleeve, two front pockets with buttons, the name,
15 quote, Mister Man, end quote, on the neck lable along with the
16 size large.

17 Vehicle 26, a maroon T-shirt with the yellow name Ward
18 Law on the front across the chest and a number 798 in maroon
19 with a yellow oval background on the lower front.

20 On vehicle No. 27 there was a grayish white and green
21 wool-type rag.

22 Q Thank you. So how many rags or shirts were there all
23 together, sir?

24 A Three shirt rags, one unknown type of a grayish white
25 rag, one plastic bag, and one that was unknown.

1 Q In addition, you testified to the fact that you found
2 some cans at the scene. Is that correct?

3 A That's correct.

4 Q These two Bondo cans were located at the scene?

5 A That's correct.

6 Q You found another can, didn't you?

7 A A plastic container.

8 Q Right.

9 MR. BORDEN: Do you happen to have that
10 container?

11 MR. ABELN: I should. Downstairs? Do you
12 want it?

13 MR. BORDEN: Yes, please.

14 MR. ABELN: It should have been there.

15 MR. BORDEN: I'll see if I can go onto something
16 else and come back, sir.

17 BY MR. BORDEN:

18 Q In addition to the Bondo cans, the rags, the shirt, and
19 a Dow can we're all going to see in a minute, you found some
20 matches. Is that accurate?

21 A That's correct.

22 Q What was written on those matches?

23 A Weis Markets.

24 Q Now, you submitted some of these items for laboratory
25 analysis, did you not?

1 A That's correct.

2 Q That's part of the stipulation that we heard in court
3 about what the results of that laboratory analysis was. Is
4 that accurate, sir?

5 A That's correct.

6 Q One of the things that you submitted as laboratory
7 analysis was liquid that you found in one of these cans. Is
8 that true?

9 A In that particular can.

10 Q In this particular can?

11 A That's correct.

12 Q Was this can empty when you found it?

13 A No, it wasn't.

14 Q You didn't submit a sample of this?

15 A The liquid in that can just appeared to be a heavy
16 syrupy type liquid, which appeared to be the actual product of
17 that can, which would have been a resin. This particular can
18 had more of a flow type liquid, and the odor, a distinctive
19 odor of something similar to gasoline.

20 Q The test results indicate that there was gasoline in
21 this can?

22 MR. ABELN: That was stipulated to, your Honor.

23 MR. BORDEN: Thank you, Mr. Abeln.

24 BY MR. BORDEN:

25 Q There was gasoline in this can?

1 A It was either -- the fact that the report says volatile
2 substance of gasoline, I'd have to look.

3 Q It was stipulated that gasoline was, in fact, found in
4 this can.

5 A Yes, it was.

6 Q Can you tell the jury why you didn't take a sample of
7 this can and submit it to the crime lab as well?

8 A I just didn't do it. I didn't feel any purpose to it.

9 Q Just didn't do it?

10 A I felt that what was in that can was what was written
11 on it. It even smelled something like a glue type of resin.

12 Q Out of all of the items that were sent to the crime lab,
13 was the crime lab ever able to come back and say that any of
14 the items were Bondo resin?

15 A Not directly.

16 Q No. The only thing that they could say was there was a
17 volatile substance?

18 A That's correct.

19 Q Was the Dow can empty when you discovered it?

20 MR. ABELN: Is that the red can?

21 MR. BORDEN: The red can we're going to see in
22 a minute.

23 A I believe it was. I'd have to double check my report.
24 I believe it was.

25 Yes, the container was empty, but it had the odor of the

1 same flammable liquid in it.

2 BY MR. BORDEN:

3 C It had the odor of gasoline, did it not?

4 A That's correct.

5 Q In your opinion, sir, the accelerant in this case was
6 the gasoline placed in the Bondo cans and the Dowgard cans.
7 Is that correct?

8 A That's correct.

9 Q Have you gotten any reports that the Bondo Fiberglass
10 resin was used as an accelerant?

11 A The gasoline being in those particular cans, it could
12 have been a foreign substance mixed with the gasoline that
13 could have been added to the flammability. That stuff -- that
14 particular resin is flammable.

15 Q Let me repeat the question again. Have you gotten any
16 reports that the Bondo Fiberglass resin was used as an
17 accelerant, or was it the gasoline?

18 A The gasoline is in the same can.

19 Q So are you -- is your response yes?

20 THE COURT: Trooper, answer the question.

21 BY MR. BORDEN:

22 Q I will repeat it one more time. Have you gotten any
23 reports that Bondo Fiberglass resin was used as an accelerant?

24 A I got no reports on that, no.

25 [Commonwealth's Exhibit No. 23, a Dowgard

1 container, was marked for identification.]

2 MR. BORDEN: Thank you.

3 BY MR. BORDEN:

4 Q Trooper, I'm going to show you what has been marked for
5 identification as Exhibit No. 23. Is this the Dowgard can
6 you found at the scene of the fire?

7 A That's correct.

8 Q Is this the Dowgard can that smelled of gasoline?

9 A That's correct.

10 Q Just to summarize, at the scene you would have found
11 these three cans, the shirts, the rags, and the matches. Is
12 that accurate?

13 A That's accurate.

14 Q Trooper, these types of things, cans like this, and
15 another Dow can that is filled with gasoline, and then the
16 rags, they are not the kind of things that you find in a
17 secure unit like the Honesdale State Police Barracks. Is that
18 correct?

19 MR. ABELN: Objection, your Honor. Generality
20 of the question.

21 THE COURT: All right. Rephrase. Sustained.
22 Rephrase it.

23 BY MR. BORDEN:

24 Q Are those the types of things that you find in the
25 Honesdale State Police Barracks, Rondo resin cans, Dow can, a

1 rag with Ward Law on it and shirts and matches?

2 MR. ABELN: Your Honor, I object again. Same
3 reason.

4 THE COURT: Come up here, please.

5 [The following discussion took place at side
6 bar.]

7 THE COURT: I'm not so sure I understand your
8 purpose of your question or your purpose of your objection.

9 MR. BORDEN: The purpose of my question is to
10 indicate that these items were brought to the scene. They're
11 not items that are commonly found in barracks, such as --

12 THE COURT: What's your problem with that
13 question?

14 MR. ABELN: I just wonder, when he first asked
15 the question, whether this Trooper would even be qualified to
16 say it was commonly kept at a barracks such as this.

17 THE COURT: Why don't you just rephrase the
18 question and ask it like you just asked me.

19 MR. BORDEN: Okay.

20 [Discussion at side bar concluded.]

21 BY MR. BORDEN:

22 Q Trooper Moschowsky, from your experience, are these
23 types of items, including the shirts that you found at the
24 scene and the rags, items which are commonly kept or stored
25 at a State Police Barracks?

1 A Commonly kept in storage? I'd say no.

2 Q These are the types of things that somebody would have
3 to lug up there. Is that correct?

4 A I would say yes.

5 Q So somebody, one or two people, or whatever, had to
6 bring this to the scene, from what you have discovered, at
7 least three cans filled with gasoline, together with the
8 shirts, and the rags, and everything else, and matches,
9 obviously. Is that correct?

10 A Not completely. I testified that there was a possibility
11 that the gasoline could have come from that dump truck that
12 was at the scene. The cans could have been in whatever
13 vehicle that arrived at the scene, same thing with the
14 container. I don't know. This container could have been
15 empty when they were brought to the scene, or it could have
16 been filled. The gasoline could have been obtained from at
17 the scene from the dump truck. Exactly where the gasoline
18 came from I'm not sure, but it didn't necessarily have to
19 have been brought there.

20 Q At one time you had a theory in this case that the
21 gasoline came from the dump truck, did you not?

22 A Not a theory. I said it's a possibility because of what
23 I observed around the dump truck, that the gasoline could
24 have. I don't know. It might have just been poured in that
25 location from one container to another and got onto the

1 ground that way. But it did appear that there was some
2 significance to that area around the dump truck. What exactly,
3 I don't know.

4 Q Is it sufficient to say that you had a theory that it
5 might have been siphoned out of the truck, but you were unable
6 to establish that?

7 A I wouldn't say that was a theory. I would say that was
8 a possibility I came up with when I observed the stain on the
9 ground by the truck.

10 Q But you couldn't establish it?

11 A If I remember right, that's correct, I didn't establish
12 whether any gasoline came from that truck or not.

13 Q At the scene did you discover any type of evidence that
14 a person used any type of extinguisher, specifically a foam
15 extinguisher, to put out this fire?

16 A Not that I actually detected or was made aware of myself,
17 no.

18 Q Did your investigation indicate that during the night
19 September 24th or the morning of September 25th that someone
20 had discovered that fire and attempted to extinguish it?

21 A Did my investigation reveal that?

22 Q Yes.

23 A No, it didn't.

24 Q Mr. Abeln asked you about the use of a timer in
25 connection with matches, and I believe that you indicated that

1 one way to create a timer or a delay device is through the
2 use of putting a match -- I'm sorry, putting a cigarette in a
3 pack of matches. Is that accurate?

4 A That's correct.

5 Q Did you find any cigarette butts at or near the scene
6 of the fire?

7 A Not that I can recall, no.

8 Q Trooper, to this point in time we've discussed the
9 general layout, what you've discovered at the scene. I want
10 to dwell for a minute on the fire, itself.

11 Would it be a fair statement to say that this was a
12 flash fire?

13 A Not in a true sense, but in somewhat of -- if you want
14 to refer to it as to whether or not it was a sustaining fire
15 or one that just occurred and then went out, I would say if
16 you're referring to that as a flash fire, then I would say it
17 would be accurate to say it was a flash type fire, but not a
18 true flash fire.

19 Q It's one that occurred and then went out? You'll agree
20 with that?

21 A That's correct.

22 Q Will you also agree with me that it lasted for a short
23 period of time, being defined as 20 minutes or less?

24 A Correct.

25 Q Would it be a fair statement to say that the damage was

1 minor?

2 A I would say that would be a fair statement, taking into
3 consideration how many vehicles are involved.

4 Q No one was hurt, were they?

5 A Not to my knowledge, no.

6 Q The barracks were not burned in any way, was it?

7 A No, it wasn't.

8 Q The barracks wasn't scorched in any way?

9 A No, it wasn't.

10 Q Do the photographs accurately depict the damage to the
11 vehicles?

12 A Not really. You couldn't really make out -- like some
13 of the tires were actually flattened and some of the tires
14 did burn on those vehicles, which I don't believe the
15 photographs are that detailed. Other than that, I would say
16 in general the photographs more or less depict the amount of
17 damage.

18 Q Did you find any evidence at the scene that any of those
19 vehicles were completely engulfed in flame?

20 A No, there was no vehicles engulfed in flame.

21 Q The Bronco, vehicle No. 14, the one that was confiscated
22 from Mr. Boransky, would you describe again for the jury how
23 that vehicle was damaged?

24 A Left rear corner, I believe the tire was flattened, gas
25 the area around the gas cap was charred, and the paint was

1 blackened. It appeared that a fire did burn for a very short
2 period of time up along that left rear corner of that vehicle
3 and then it was out.

4 Q And that's it?

5 A That's it.

6 Q The vehicle wasn't gutted?

7 A No, it wasn't.

8 Q It wasn't burned to the extent that it became wall to
9 wall rust?

10 A That's correct.

11 Q You testified as part of this investigation when you
12 went out there the rear window of that vehicle was opened. Is
13 that correct?

14 A The left rear side window.

15 Q Were those photographs taken at your direction?

16 A I requested the photographs to be taken. Trooper Zanin
17 just took them at his discretion. I was doing something else
18 while he was taking photographs.

19 Q You're the fire investigator?

20 A That's correct.

21 Q Yet we have someone else who's out taking the photograph
22 rather than yourself, personally, or someone under your
23 direction?

24 A He's the expert photographer for the State Police, so I
25 had him come out and do the photographs.

1 Q Did you tell him what you wanted photographs of?

2 A I told him I wanted all the areas photographed; I wanted
3 the container photographed. I told him take an overall shot.

4 Q Can you tell us why there is not a photograph of the
5 supposed open window on the Bronco?

6 A No, I can't, unfortunately. If I was taking the
7 photographs, I probably would have taken it. I probably would
8 have taken a more direct shot or full shot, rather, of the
9 actual vehicles that were involved.

10 Q You testified about some fingerprints that were found.

11 MR. ABELN: Objection, your Honor. It wasn't --

12 THE COURT: Sustained.

13 MR. BORDEN: I'm sorry.

14 BY MR. BORDEN:

15 Q You testified about some prints of some kind that were
16 found on these cans. Is that right?

17 A That's right.

18 Q On one of the cans you indicated was found, and it's
19 been stipulated to, was a mark of a Playtex plastic glove.
20 Is that correct?

21 A Rubber glove. That's correct.

22 Q That led you to the conclusion that the person that was
23 wearing that -- that handled that can was wearing Playtex
24 rubber gloves. Is that correct?

25 A No. The report indicated that it appeared to have been

1 a rubber glove, Playtex type, was found on that can, and I
2 believe I testified as somewhere along the line that can,
3 obviously, might have been handled by someone with a rubber
4 glove. Could have been at that time, could have been before
5 that time.

6 Q But that evidence is not inconsistent with the conclusion
7 that the person that did handle that can at the time of the
8 arson could have been wearing Playtex plastic gloves. Is that
9 accurate?

10 A Could have been. That's correct.

11 Q On the other can was found, and Trooper Zanin's report
12 characterized it as a fiber ribbing. Do you recall that?

13 A Yes, I do.

14 Q A fiber ribbing, the finding of a fiber ribbing, is
15 consistent with the conclusion that the person that handled
16 that can was wearing cloth gloves. Is that correct?

17 A That's not the conclusion I came to.

18 Q If you were wearing cloth gloves and you handled that
19 can, could a fiber ribbing mark result?

20 A I'd say it's possible.

21 Q So the evidence in terms of what was found on those cans
22 is not inconsistent with the conclusion that there were two
23 people there the night of that fire, one wearing Playtex
24 plastic gloves, and the other wearing cloth gloves. Is that
25 correct?

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1 MR. ABELN: Objection, your Honor. It's two
2 phrased -- two prong question. He should limit it to one part
3 and then ask the other part, it would be proper.

4 THE COURT: Overruled. Answer the question.

5 A Again, that's not my conclusion. Whether someone there
6 was wearing one glove, two gloves, whether the fiber ribbing
7 came from a glove, in fact, I don't know.

8 BY MR. BORDEN:

9 Q I'm just saying, sir --

10 A I don't know.

11 Q -- what was found is not inconsistent with the conclusion
12 I pose to you. Is that correct?

13 A Personally, no. I have to disagree. I don't see how
14 you can come to that conclusion. We have established that one
15 of the prints was possibly from a Playtex rubber glove. The
16 fiber ribbing we -- we're assuming -- you're assuming that
17 it's a glove. It could have been -- the can could have been
18 up against a piece of fabric and it adhered to the can. I
19 have no idea where that fiber came from, therefore, I don't
20 make any conclusion.

21 Q Trooper, my question is very simple. Does that evidence
22 disprove the theory that there were two people there that
23 night, one wearing Playtex gloves, and the other wearing
24 cloth gloves?

25 A No, it doesn't.

1 Q Trooper, you testified -- correct me if I'm wrong -- that
2 there is no doubt in your mind that if these vehicles had
3 exploded, the remainder of the vehicles. the 31, would have
4 gone up. Is that correct?

5 A I don't agree with the terminology exploded.

6 Q All right. Caught on fire.

7 A I agree.

8 Q For that to happen initially, for there to be any fire
9 of 10 vehicles, 15, or 31, and for you to render that opinion,
10 there's got to be a conclusion that these vehicles would have
11 caught on fire in the first place, correct?

12 A You would have had to have a fire. That's correct.

13 Q But we didn't have a fire, did we?

14 A Yes, we did.

15 Q We didn't have a fire that was sufficient to ignite 10
16 vehicles, did we?

17 A The fire that had occurred wasn't sufficient, no, it
18 wasn't.

19 Q You're giving an opinion, upon the conclusion that these
20 vehicles would have caught on fire. Is that correct?

21 A That's correct, that's what the intent was. They could
22 have.

23 Q They could have. You're saying they could have caught
24 on fire, but they didn't. Tell the jury why they didn't
25 catch on fire.

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1 A Could be a variety of reasons. A lot of variables
2 involved when you're talking about a fire.

3 For some reason when that flammable liquid trail was
4 ignited -- again, just for some reason -- it just didn't do
5 what it was intended to do. Some of the wicks did not catch
6 fire, therefore, the fire didn't spread to the vehicles.
7 Obviously, the ground just burned.

8 Maybe the fire wasn't burning that high, or maybe it
9 wasn't exactly that hot to catch the rags on fire. I really
10 can't say exactly why it didn't work. It was designed to work.
11 Why it didn't work I don't know.

12 Q It didn't work or couldn't have worked for several
13 reasons. Is that accurate? You don't know why, but there
14 could be several possibilities as to why these vehicles did not
15 go up. Is that correct?

16 A That's correct.

17 Q One of them -- tell me if you disagree with me -- is
18 lack of combustion. Is that right?

19 A That's a possibility, yes, it is.

20 Q Define for the jury combustion.

21 A Any item that will ignite when an ignition source is
22 brought to it.

23 Q One of the possibilities is there was not sufficient
24 combustion. Is that accurate?

25 A That's accurate.

1 Q Another possibility is that the gas mixture in any of
2 these vehicles was too rich. Do you agree with that?

3 A Are you referring to that now, regardless of a fire, or
4 just a mixture of how rich it is inside the gasoline tank?

5 Q I'm talking about how rich it is inside a gasoline tank.

6 A The gasoline inside a gasoline tank is obviously rich.
7 It's pure gasoline.

8 Q If the gasoline in those tanks was too rich, a fire
9 wouldn't have occurred, would it?

10 A That's a difficult question just to answer yes or no.

11 Q All right. Would you explain to the jury what is meant
12 by the term flammable range?

13 A That's the range at which vapors are given off by a
14 liquid and could be ignited.

15 Q Let me know if you disagree with this definition: The
16 difference between the upper and lower flammable limits
17 expressed in terms of percentage of vapor or gas in the air by
18 volume is known as explosive or flammable range. Do you agree
19 with that?

20 A That's correct.

21 Q Would you tell the jury the flammable range of gasoline?

22 A I'm not exactly sure, but I believe it's somewhere down
23 around 45 degrees below zero. It has a very high flammable
24 range. Vapors are given off readily below zero. I'm not
25 exactly sure how -- I think it's 45. I'm not positive. In

1 other words, what that's saying is gasoline at a particular
2 temperature below zero already starts giving off vapors which
3 can be ignited.

4 Q Trooper, aren't you talking about flash point instead of
5 flammable range? Isn't the flash point of gasoline minus 45
6 degrees?

7 A All right. Flash point. I'm sorry.

8 Q So you're talking about flash point, and I'm asking you
9 about flammable range. You agreed with my definition of
10 flammable range?

11 A That's when gasoline becomes flammable, when it -- at
12 its flash point, when it starts giving off vapors. As in any
13 gas, once vapors are being given off it's within the flammable
14 range, to my understanding.

15 Q So it's your understanding --

16 A In other words --

17 Q -- that the mixture of gas vapor and oxygen vapor doesn't
18 make any difference?

19 A No, I didn't say that.

20 Q Good. Would you agree with me that the flammable range
21 of gasoline is 1.4 percent to 7.6 percent?

22 A That I'm not familiar with.

23 Q Do you disagree with this statement: The flammable
24 range of gasoline is 1.4 percent to 7.6 percent. This means
25 that if we have a vapor composed of 1.4 gasoline and 98.6

1 percent air we could have a flammable mixture. Any mixture
2 in which gasoline vapor is below 1.4 percent will not ignite
3 because it's too lean. If the gasoline vapor content is above
4 7.6 percent the vapor will not ignite because it's too rich.
5 Do you agree with that?

6 A That's correct. I agree.

7 Q So we were talking here why we didn't have a fire. All
8 these fire trails and rags, and there have been pictures up
9 here about vehicle 14's tank scorched, and I think you said
10 that the very rag that was on vehicle 14 was burned to the
11 degree it fell in the gas tank. Is that correct?

12 A It didn't fall in the gas tank. It fell in when I
13 touched it.

14 Q But we didn't have a fire, right?

15 A You didn't have a fire to the gasoline tank?

16 Q Right.

17 A That's correct.

18 Q One of the reasons or possibilities we didn't have a
19 fire is because the mixture in these tanks was too rich. In
20 other words, it was above 7.6 percent, and as a result,
21 regardless of what happened outside that tank, it wasn't going
22 to explode because it was too rich a mixture. Is that true?

23 A That's not true.

24 Q That's not true? Well, do you disagree with me that
25 gas tanks are so designed that we don't have explosions because

1 they're designed to be too rich?

2 A I disagree with you, that's correct.

3 Q Let me backtrack for a minute. We talked about
4 combustion. We talked about the gas in the tanks being too
5 rich. You agreed with the statement that if the vapor mixture
6 in that tank is too rich, then that tank will not explode. Do
7 you agree with that?

8 A I don't agree with that.

9 Q Why not?

10 A You keep referring to the gasoline inside the tank.

11 Q Right.

12 A The gasoline inside the tank isn't what's going to
13 ignite. The vapors that that gasoline is giving off and
14 coming up that fill pipe is what's going to ignite.

15 Q I agree.

16 A Those vapors, as they're coming up that fill pipe, now,
17 this is where you get into, to more simply put it, if the
18 mixture isn't perfect, it's not going to ignite, but the fact
19 that gasoline is rich in the tank and it's coming up there
20 doesn't mean that the mixture is always too rich and will
21 never ignite.

22 I have investigated fires where the gas tanks blew up;
23 I have investigated fires where they didn't. Sometimes it's
24 too rich; sometimes it isn't. It depends on how much oxygen
25 gets mixed with the vapor. So it can explode, and then it

1 might not. It depends.

2 Q All right. What you're talking about is this: This is
3 a gasoline tank and filled with gasoline somewhere. Obviously
4 if you take off the top some vapor is going to come out, right?

5 A That's correct.

6 Q So when you talked about the area outside the gas --
7 assume this is the cap right here -- you're talking about this
8 area in here and a fire out here. Is that accurate?

9 A And the area from the top of the gasoline to the top of
10 the tank. It's all going to have some air, oxygen.

11 Q Exactly. Regardless of whether we're talking about in
12 the tank in this area or out of the tank, if the vapor mixture
13 between oxygen and gasoline is not right there will be no
14 ignition. True?

15 A That's true.

16 Q The amount of vapor that is going to come out of there
17 is a direct correlation to the amount of gasoline in the tank.
18 True?

19 A I'd say that's true.

20 Q Fine. For there to be an explosion or a fire to the
21 degree that you've said you can render an opinion on those
22 10 vehicles, you've got to make a determination as to whether
23 there was a correct vapor mixture. In other words, there could
24 have been ignition. Correct?

25 A I have to make that determination? No.

1 Q You gave an opinion that all these vehicles are going to
2 burn, sir.

3 A I said could.

4 Q You said I have no doubt.

5 A That's right. I have no doubt that all of those vehicles
6 could have burned had the fire broke out the way it was design
7 to do.

8 Q For you to render that opinion you've got to make the
9 determination as to the amount of vapor and oxygen. Is that
10 correct?

11 MR. ABELN: Objection, your Honor. He's already
12 answered the question.

13 THE COURT: Sustained.

14 MR. BORDEN: I agree.

15 BY MR. BORDEN:

16 Q You agreed to that, right?

17 THE COURT: Sustained.

18 BY MR. BORDEN:

19 Q Trooper, I want you to go down your chart, the one that
20 you drew, and I want you to tell me, so that we can try to go
21 through this problem together, how much gasoline was in the
22 tank of vehicle 13?

23 A I have no idea.

24 Q You don't know?

25 A No, I don't.

1 Q Can you tell me how much gasoline was in the tank of
2 vehicle 14?

3 A No, I can't.

4 Q We'll keep going. How about vehicle 15? Can you tell
5 the jury how much gas was in that tank?

6 A I have no idea how much gas was in any of the tanks,
7 counselor.

8 Q That includes 16, 17, 24, 25, 26, and 27, correct?

9 A That's correct.

10 Q Not to mention the other 21 cars. Isn't that accurate?

11 A That's accurate.

12 Q Yet not knowing the amount of gasoline, the amount of
13 vapor, that could be created and the possible mixture, you're
14 telling the jury that this fire could have possibly happened?

15 A That's correct.

16 Q Do you recall testifying at a preliminary hearing?

17 A Yes, I do.

18 Q Do you recall testifying under oath?

19 A Yes, I do.

20 Q You testified as an expert witness, and you testified
21 under oath in that other occasion, did you not?

22 A That's correct.

23 Q When you testified under oath that was on March 24, 1986
24 Is that correct?

25 A I'll accept that date. Without looking it up, I'm not

1 sure of the exact date.

2 MR. ABELN: I'll concede that that was the day,
3 your Honor.

4 Can you tell me the page number?

5 MR. BORDEN: Sure.

6 THE COURT: Mr. Borden, how long are you going
7 to be?

8 MR. BORDEN: Awhile, sir. You want to take a
9 break?

10 THE COURT: Yes. Ladies and gentlemen of the
11 jury, we're going to recess for 15 minutes. Remember, during
12 this recess or any other recess, let's not discuss the case
13 until all of the evidence is in.

14 REINHARD WAGNER, COURT CRIER: Going to recess
15 15 minutes.

16 [A recess was taken.]

17 REINHARD WAGNER, COURT CRIER: Court of Common
18 Pleas come to order. You may be seated.

19 MR. BORDEN: Thank you, sir.

20 BY MR. BORDEN:

21 Q Trooper Moschowsky, I want to backtrack for just a
22 minute. During the recess did you have a chance, perhaps, to
23 check your notes and check my calculation of the distance
24 being a hundred and four feet?

25 A I had a better chance to more or less add up some of my

1 figures. That's correct.

2 Q Is my number of a hundred and four feet accurate?

3 A I'd say closer to a hundred feet is a lot more accurate
4 then mine was. That's correct.

5 Q Put a hundred down.

6 MR. ABELN: That's to what?

7 BY MR. BORDEN:

8 Q That is to the distance from the rear of the barracks to
9 the front of vehicle 14.

10 A Approximately, yes, from the barracks to the vehicle.

11 Q Now, prior to the recess, your testimony was that the
12 10 vehicles could have ignited, and if that occurred there is
13 no doubt in your mind that the remaining 21 vehicles would
14 have ignited, correct?

15 A Or the majority. That's correct.

16 Q When that occurs there was no doubt in your mind that
17 the barracks would have received damage. Is that correct?

18 A It's a good definite possibility. That's correct.

19 Q Good definite possibility. And that the Troopers or the
20 occupants of that building would have been injured. Is that
21 correct?

22 A Could have been.

23 Q Could have been injured?

24 A That's correct.

25 Q You recall testifying at the preliminary hearing under

1 cath?

2 A Yes, I do.

3 Q At that preliminary hearing I asked you certain question

4 MR. ABELN: Excuse me. What page?

5 MR. BORDEN: Forty-nine.

6 BY MR. BORDEN:

7 Q You testified as an expert in that particular case?

8 A That's correct.

9 Q I asked you the following question:

10 "You testified in response to Mr. Abeln's question that
11 it is conceivable, but I want to go back to his language
12 about worst scenario. On the basis of what you saw it is
13 conceivable that the barracks could have been damaged. Is
14 that correct?"

15 "Conceivable, correct."

16 A I used the word conceivable. That's correct.

17 Q Went on, bottom of page 50:

18 "Trooper, anything's conceivable. It's conceivable that
19 the building will be hit by lightening."

20 Went on with the question.

21 Your answer was: "To answer truthfully, I would have to
22 venture conceivability and really venture a guess."

23 I went on, and I asked you the question: "Trooper, all
24 right, now, would it be a fair statement to say that you can't
25 give us an opinion other than it's conceivable?"

1 Answer: "That's correct."

2 I went on, and I asked you about the people that were
3 in the barracks. I'm now on page 53.

4 Question: "I want to ask you one last question. Going
5 back to the worst scenario, the area of conceivability, and
6 the barracks did catch fire somehow, when it's conceivable
7 this occurs, and considering the number of exits that are
8 involved and the equipment that is located in those barracks,
9 was there anything that would have prevented whoever was
10 inside from escaping?"

11 Answer: "Again, I'm guessing."

12 "You're guessing?"

13 Answer: "Yes."

14 This preliminary hearing where you testified under oath
15 was on March 24, 1986. As you state, at that point in time
16 you could only say it was conceivable that the damage would
17 occur. It was conceivable or I'm guessing as to whether
18 anybody would be hurt. Yet today you're testifying in front
19 of this jury, and you're using the term I have no doubt.
20 Which version is correct, Trooper? Which time are you
21 testifying accurately under oath? Now or when you testified
22 under oath on March 24, 1986?

23 A Both times.

24 Q You'll agree with me, sir, that testimony is totally
25 inconsistent?

1 A No, I don't agree with you.

2 Q You have rendered an opinion that the ignition of the
3 10 cars, leading to the 21, leading to the barracks, leading
4 to the occupants, you'll agree with me, will you not, for you
5 to render an opinion as to the spread of a fire you have to
6 have some basic information? Right?

7 A Basic information, that's correct.

8 Q We know that you had no information regarding how much
9 gasoline at all was in these cars. Is that true?

10 A That's correct.

11 Q What were the weather conditions on September 24th?

12 A My understanding, it was cool, possibly dew on the
13 ground.

14 Q Did you check with the Weather Bureau to find out what
15 the weather conditions were?

16 A No, I didn't.

17 Q Would you tell us the wind conditions that day?

18 A No, I can't.

19 Q Well, isn't wind a factor in determining how a fire is
20 going to spread?

21 A Could be a factor.

22 Q But you didn't check that either?

23 A No, I didn't.

24 Q So we don't know, or this jury doesn't know, how much
25 gasoline, what the weather conditions were for sure, what the

1 wind conditions were, what vehicles were parked behind here,
2 and yet it's your testimony under oath that you can render an
3 opinion as to I have no doubt, I'm the one that conducted this
4 investigation, and yet on March 25th the best you could do was
5 it's conceivable. Is that correct?

6 MR. ABELN: Objection, your Honor. He's already
7 gone through this. It's been asked and answered by the witness.

8 THE COURT: I will allow it one more time.
9 Overruled.

10 BY MR. BORDEN:

11 Q Is that correct, sir?

12 A Based on my recollection of the evidence, that is true.

13 MR. BORDEN: No further questions.

14 MR. ABELN: May I approach the witness, your
15 Honor?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. ABELN:

19 Q Trooper, I'm going to show you Commonwealth's Exhibit 1,
20 Commonwealth's Exhibit 2, Commonwealth's Exhibit 15. Do those
21 pictures accurately represent the situation where the vehicles
22 were parked on the day of the fire?

23 A That's correct.

24 Q Did you measure at my request the length of one of the
25 vehicles?

1 A I did.

2 Q What's the length of the patrol car?

3 A Approximately 15 feet.

4 Q Now, also, Trooper, there was some questions posed to
5 you about the significance of a gas tank, whether it was full,
6 partially full, or empty. What's the difference in terms of
7 an arson of an automobile whether the tank is filled or empty?

8 A The amount of emphasis that's being placed on that is
9 whether or not there were five gallons in the tank or whether
10 there were 15 gallons in the tank in itself is not a major
11 issue. Had the tank been empty, there was more possibility
12 that an explosion would have even occurred, never mind just
13 the fire.

14 The only significance of gasoline or the amount of
15 gasoline the tank would have would be had the tank ruptured
16 and the gasoline had a chance to spread, then, naturally, if
17 there was more gasoline in the tank you would have had a more
18 widespread flammable liquid fire. That would have been the
19 only significance.

20 Had all those tanks been empty, they weren't there that
21 long, the tanks would have still had gasoline vapors in them.
22 There is the potential of an explosion was there. And another
23 thing is whether you're talking about a fire progressing from
24 one vehicle to another, you're not necessarily even talking
25 about the gasoline tank. With the amount of heat that's being

1 generated from one engulfed vehicle, let's say, with another
2 vehicle being that close to that one vehicle, the glass is
3 going to shatter in the other vehicle, and it's going to
4 ignite the interior or combust the material inside that car,
5 and you're going to have another fire. And on and on and on
6 to conceivable -- I use that term again -- all the vehicles,
7 or possibly, or in my opinion had one vehicle definitely
8 became involved it definitely could have spread to the rest
9 of the vehicles, thereby definitely making a threat of danger,
10 a threat of danger to the immediate area.

11 I could never testify as an expert what actually could
12 have happened or what would have happened, rather -- I'm sorry
13 what would have happened is another thing. I could say,
14 though, what could have happened as a result of what was
15 intended that day, and not just based on at the hearing, I
16 made myself perfectly clear after Mr. Abeln got done that that
17 was my intention, that the barracks could have been damaged.

18 On cross-examination I -- I was being referred to the
19 defendant's vehicle, the distance of the defendant's vehicle
20 to the barracks most of the time. I did not base my opinion
21 on that one vehicle or even just the four vehicles that were
22 damaged. We had 21 vehicles. We had possibly -- there were
23 other vehicles in the parking lot. Even without those
24 vehicles, if the 31 vehicles had ignited there would have been
25 a huge enough fire that with flammable liquid being involved

1 it could have rolled across that macadam, hit the barracks,
2 and possibly caused a fire. You didn't even need a direct
3 connection. I have investigated fires where that has happened.

4 MR. ABELN: No further questions.

5 RECROSS-EXAMINATION

6 BY MR. BORDEN:

7 Q Trooper, in response to Mr. Abeln's question, I agree
8 with you totally if the tanks were empty the chances of an
9 explosion would be greater because there would be a greater
10 mixture of oxygen and gasoline vapor. But we don't know
11 whether those tanks were empty or full, do we?

12 A No, we don't.

13 Q I heard you just testify in terms of on one occasion it's
14 conceivable it could have spread, another occasion you said
15 it could have happened, and another occasion you said it's
16 possible, and on another occasion you said definitely.

17 Trooper, you're under oath. You are the fire
18 investigator in this case. Isn't it true that the only thing
19 you can tell this jury is that it's conceivable these things
20 would have occurred?

21 A No. All the terminologies I used, counselor, were
22 accurate. When I used the term definite I was using it in
23 conjunction with could have and definitely could have happened
24 not maybe would have happened or anything like that. When I
25 use -- I didn't say that a fire definitely would have ignited

1 the other vehicles and definitely would have ignited the
2 barracks. I did not say that.

3 I said there was a definite possibility that that could
4 have happened and did place, in fact -- the barracks would
5 have been placed in danger. That's what my testimony was.
6 We've gone over it so many times, there's a possibility that
7 maybe -- I don't know what's being conceived from my testimony
8 but the bottom line to my testimony at the hearing and in this
9 courtroom here today is that had the fire, the design that
10 was there, worked, there was a definite possibility, a
11 definite possibility, that the barracks could have been placed
12 in danger. No doubt in my mind. It is within a reasonable
13 distance.

14 When you use hundred feet and put it on the board like
15 that, I mean, it could be misleading. I don't want to be
16 misleading.

17 Q Trooper, I haven't tried to mislead anyone. That's why
18 I took the time to measure this courtroom, so that these
19 ladies and gentlemen fully understand the distance that's
20 involved.

21 MR. BORDEN: I have no further questions.

22 MR. ABELN: No redirect, your Honor.

23 THE COURT: You may step down.

24 . . .

25

1 REINHARD WAGNER, COURT CRIER: Court is now
2 in session. You may be seated.

3 THE COURT: Good afternoon. All right, we have
4 the jury, all parties, the defendant. Proceed.

5 MR. ABELN: Good afternoon, your Honor.

6 I call Russell W. Thomas to the stand.

7 ---

8 RUSSELL W. THOMAS, called on behalf of the
9 Commonwealth, having been duly sworn, was examined and testified
10 as follows:

11 LINDA SODEN, COURT CLERK: Please state your
12 name.

13 THE WITNESS: Russell W. Thomas, T-h-o-m-a-s.

14 DIRECT EXAMINATION

15 BY MR. ABELN:

16 Q Your occupation, sir?

17 A Special Agent, Office of Attorney General, Bureau of
18 Criminal Investigation.

19 Q What is your current assignment?

20 A The last two and a half years I've been working an auto
21 theft investigation here in Honesdale, Wayne County, with the
22 State Police.

23 Q Is that Troopers Novatnak and Golden?

24 A Yes, sir, and also Special Agent Farcus from my office.

25 Q Do you know the defendant in this case?

Thomas - direct

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1 A Yes, sir, I do.

2 Q Would you point him out, please.

3 A Steven Romansky, seated there at the table.

4 Q Do you know Thomas Smithers?

5 A Yes, I do.

6 Q When Mr. Romansky's Bronco was seized, did you have an
7 opportunity through your investigation to find out where that
8 Bronco had been inspected?

9 A Yes, sir, I did.

10 Q Where was it?

11 A At the garage owned by Thomas Smithers.

12 Q Did you have an opportunity to review the inspection
13 records pertinent to this Bronco?

14 A Yes, sir.

15 Q Did you have an opportunity to interview Thomas Smithers?

16 A Yes, sir.

17 Q What did he tell you relative to the Bronco and the
18 inspection stickers?

19 MR. BORDEN: Objection, hearsay.

20 Could we approach the bench?

21 [The following discussion took place at side
22 bar.]

23 MR. BORDEN: I didn't know that Mr. Thomas was
24 going to be a witness. I don't know where you're going, but
25 I would ask for an offer of proof.

Thomas - direct

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1 MR. ABELN: I intend to offer Mr. Thomas as the
2 person who was involved in the consensual interception to
3 identify the fact that they occurred, that he reviewed the
4 tapes, and that the transcripts were done correctly. I also
5 want to have him testify to the fact that -- we entered into
6 a plea agreement -- we entered into an agreement with Mr.
7 Smithers during the course of our investigation of Mr. Romansky
8 that Mr. Smithers would agree to wear a consensual inter-
9 ception device.

10 Mr. Thomas was contacted by Mr. Smithers, and I
11 want to lay the background as to why he was contacted.

12 Mr. Smithers is present in the courtroom. I
13 anticipate that he is going to be -- that counsel is going to
14 try to discredit Mr. Smithers as to his involvement in criminal
15 activity.

16 I would ask Mr. Thomas to testify as to his
17 investigation of the inspection station, his discussions with
18 Mr. Smithers, and his decision not to pursue any further
19 criminal investigation on behalf of Mr. Smithers.

20 MR. BORDEN: I view the situation where I do not
21 object to his testifying yes, there was a consensual tape; yes
22 it was with Mr. Smithers, and that's it. As far as going into
23 the criminal background of Mr. Smithers and going through
24 inspection stations and everything else I feel is totally
25 irrelevant and highly prejudicial.

Tolson - direct

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1 MR. ABELN: It's pertinent, your Honor, in two
2 ways: One is pertinent to the fact that Mr. Smithers did
3 inspect, or his station did inspect, the Bronco. Secondly, it
4 goes to the complete investigation that was conducted in this
5 particular charge.

6 MR. BORDEN: This is not a car theft case. This
7 has nothing -- we aren't here to prove the Bronco was stolen
8 or not or anything about it.

9 MR. ABELN: I'm not going to offer any evidence
10 through Mr. Thomas or Mr. Smithers or anybody else as to the
11 course of this car, only that Mr. Thomas had investigated Mr.
12 Smithers and there was no intention on our office whatsoever
13 to prosecute this individual at any time.

14 THE COURT: Your objection is overruled. But
15 I caution you, counselor, to be extremely careful in your
16 questions, and your witness better be extremely careful in
17 his answers too.

18 MR. ABELN: As to what, sir?

19 THE COURT: The whole background of this. If
20 it's simply a matter of a slight background, that's fine, but
21 if you're going into a car theft type --

22 MR. ABELN: No, I am not, sir.

23 THE COURT: All right.

24 MR. ABELN: Only as to Mr. Smithers, himself.

25 MR. BORDEN: I want the record to reflect that

Thomas - direct

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1 nobody has implied or even suggested that they're going to
2 raise the criminal activity of Mr. Smithers. To put it on at
3 this point in time is indeed premature, and I view it not only
4 as premature, but prejudicial.

5 THE COURT: Your objection is noted.

6 MR. BORDEN: As far as my objection on hearsay
7 grounds, which is outstanding --

8 THE COURT: No, it's not outstanding, I overrule
9 it.

10 [Discussion at side bar concluded.]

11 BY MR. ABELN:

12 Q In relation to the inspection records of the Bronco, the
13 defendant's Bronco, did Mr. Smithers inspect that Bronco?

14 A No. A mechanic employed by him at his station did that,
15 according to the records, and according to what he told me.

16 Q Was Mr. Smithers called to the grand jury as a witness
17 in regards to the Romansky Bronco?

18 A Yes, he was.

19 Q Did the grand jury make recommendations to prosecute
20 individuals involved in an overall -- the activities of your
21 investigation?

22 MR. BORDEN: Please note my objection.

23 THE COURT: Overruled.

24 A Yes, sir, the grand jury made recommendations to
25 prosecute various individuals.

Thomas - direct

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1 BY MR. ABELN:

2 Q Was any such recommendation made in regard to Thomas
3 Smithers?

4 A None whatsoever.

5 Q Were any of Tom Smithers' cars ever confiscated and
6 impounded behind the Pennsylvania State Police Barracks in
7 Honesdale?

8 A No, sir, none.

9 Q Did you have an opportunity to discuss with Tom Smithers
10 Steven Romansky at a later time after his grand jury
11 appearance?

12 A Yes, sir, on several occasions.

13 Q How did it come about that Mr. Smithers became involved
14 in a consensual interception between Mr. Romansky and Mr.
15 Smithers?

16 A Mr. Smithers contacted me on several occasions after he
17 left the employ of the Police Department and became a private
18 detective, and informed me confidentially about the activities
19 of Mr. Romansky, and --

20 MR. BORDEN: Objection. May we approach the
21 bench, please?

22 [The following discussion took place at side
23 bar.]

24 MR. BORDEN: At this time I will make a motion
25 for a mistrial. The Court cautioned counsel about this

Thomas - direct

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1 witness. He is now indicating he was contacted several times
2 about the activities of my client, not an activity, and it has
3 totally tainted the jury, and I'm asking for a mistrial.

4 MR. ABELN: Your Honor, he said nothing about
5 criminal involvement. The activities is what his involvement
6 was personally.

7 I will limit my -- that specifically to that
8 question and rephrase the question, if counsel would like.

9 THE COURT: Your motion for mistrial is denied.
10 You're playing with fire, though.

11 [Discussion at side bar concluded.]

12 BY MR. ABELN:

13 Q Did agents of our office, of the office of Attorney
14 General, supervise the consensual interceptions between Mr.
15 Smithers and the defendant?

16 A Yes, sir.

17 Q How many --

18 A On three occasions.

19 Q Were transcripts made of these conversations?

20 A Yes, sir, there were.

21 Q Was a composite tape made that condensed these conver-
22 sations and limited them to the pertinent statements as it
23 pertains to this arson investigation?

24 A Yes, sir, such a composite was made.

25 Q Did Mr. Smithers voluntarily agree to do -- participate

Thomas - direct cross

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1 in these interceptions?

2 A Yes, sir. He contacted me initially in early December
3 and voluntarily requested to engage in this consensual
4 interception. I thereafter contacted you, outlined the facts,
5 and received the approval as required by the statute.

6 Q Did you participate in my conversation with Mr. Smithers?

7 A Yes, sir, I did.

8 Q Is Mr. Smithers here today?

9 A Yes, sir, he is.

10 MR. ABELN: Cross-examine.

11 CROSS-EXAMINATION

12 BY MR. BORDEN:

13 Q Mr. Thomas, so that the record is clear, Mr. Romansky,
14 being my client, has never been convicted of stealing a car,
15 has he?

16 MR. ABELN: Your Honor?

17 MR. BORDEN: Has he or hasn't he?

18 THE COURT: Just a second.

19 MR. ABELN: Nothing, your Honor.

20 THE COURT: Okay. Answer the question.

21 A No, sir, he's never been convicted of stealing a car,
22 to my knowledge.

23 BY MR. BORDEN:

24 Q Has he ever been convicted of receiving a stolen car,
25 to your knowledge?

1 A To my knowledge, he has not been convicted of receiving
2 a stolen car.

3 Q Mr. Thomas, you are not denying the fact, are you, that
4 a deal was cut with Tom Smithers? When I say the term deal I
5 mean in exchange for him doing certain things for you, you
6 would agree to do certain things for him. You don't deny that,
7 do you?

8 A Well, I would deny that there was a deal cut. What I
9 would explain is that after the first consensual interception,
10 which occurred, I believe, on the 19th of December, 1985,
11 there arose a question in Mr. Smithers' mind about the
12 propriety of his inspection records and his possible liability
13 with regard to those records. He consulted with his attorney,
14 Mr. Westervelt, who then spoke to our deputy attorney general,
15 Mr. Abeln, and Mr. Abeln agreed with Mr. Westervelt and Mr.
16 Smithers that the propriety of his inspection records was not
17 the focus of our investigation, and that we would agree that
18 if the records were not proper or in order that there would be
19 no prosecution initiated against Mr. Smithers for those what
20 would be relatively minor infractions.

21 Q I agree with you till you got to the very end. It was
22 agreed that Thomas Smithers would not be prosecuted. When
23 we're talking about altering official documents, you've been
24 involved in enough of these, what kind of charge is that?

25 A The possible maximum charge could be tampering with

1 public records.

2 Q And that is?

3 A What we were talking about were inspection records that
4 Mr. Smithers indicated were handled by various employees of
5 his, sometimes with his knowledge and sometimes without his
6 knowledge --

7 Q Mr. Thomas, what is the penalty for tampering with
8 official records, if you know?

9 A I'm not sure, sir. I'm not certain of the exact penalty.
10 I believe it's a misdemeanor of the first degree.

11 Q Thank you, sir.

12 MR. BORDEN: No further questions.

13 REDIRECT EXAMINATION

14 BY MR. ABELN:

15 Q Was Mr. Smithers ever prosecuted by anybody for tampering
16 with public records?

17 A Not to my knowledge, sir.

18 Q Do you have any evidence that would -- today -- that would
19 show that he had tampered with public records?

20 A No. To my knowledge, he has no criminal record or that
21 to my knowledge, he has not tampered with any public records
22 either.

23 Q You've investigated --

24 A It was indicated that there might be some allegation --
25 this was Mr. Smithers' concern, was that during the course of

1 these consensual interceptions that Mr. Romansky might allege
2 or threaten to expose him in some regard with regard to these
3 inspection records.

4 Q Did you investigate that?

5 A Yes, sir.

6 Q As a police officer and as a special agent of the Bureau
7 of Criminal Investigation, Office of Attorney General, do you
8 have any evidence whatsoever that Mr. Smithers could be arrested
9 for tampering with public records?

10 A None, sir.

11 MR. ABELN: That's all.

12 MR. BORDEN: No further questions.

13 THE COURT: Thank you.

14 THE WITNESS: Yes, sir, thank you.

15 . . .

16 REINHARD WAGNER, COURT CRIER: Court recess
17 for ten minutes.

18 [A recess was taken.]

19 THE COURT: We have the defendant here. The
20 jury is still out, and it's my understanding that you want the
21 standard charge as to the failure of the defendant to take the
22 stand. Is that correct?

23 MR. BORDEN: That's correct, sir.

24 THE COURT: All right. That's granted.

25 MR. ABELN: No objection, your Honor.

1 MR. BORDEN: In addition, your Honor, I would
2 like the record to reflect the fact that the defense has
3 proposed points for charge dealing with an expert witness.
4 It was requested that Nos. 3, 5, 6, 7, and 8, if you read to
5 the jury -- it's my understanding that that request has been
6 denied.

7 THE COURT: We will cover it generally in the
8 general charge of the Court as to an expert witness, but not
9 specifically as you outlined it.

10 MR. BORDEN: Thank you, sir. I would submit
11 the points.

12 THE COURT: Thank you.
13 Bring the jury in, please.

14 [The jury enters the courtroom.]

15 ---

16 I hereby certify that the proceedings and
17 evidence are contained fully and accurately in the notes
18 taken by me at the trial in the above matter; and that the
19 foregoing is a true and correct transcript of the same.

20
21 
22 SHERYL JOHNSON
23
24
25

COMMONWEALTH

: IN THE COURT OF COMMON PLEAS
 : OF WAYNE COUNTY, PENNSYLVANIA
 : NO. 42 - 1986 - CRIMINAL

VS.

: CHARGE: Ct.#2- Arson & Related
 Offenses (Endangering
 Property); Ct.#3- Reckless
 Burning or Exploding;
 Ct.#4- Causing or Risking
 Catastrophe; Ct.#5- Tampering
 With Evidence;

STEVEN L. ROMANSKY

: PROS: Special Agent, Russell W. Thomas

REPORTER'S

NOTES OF TESTIMONY

Tuesday, February 10th, 1987, at
 AND NOW, /11:00 A.M., hearing held in
 the above entitled cause before the
 HONORABLE ROBERT J. CONWAY, President
 Judge, Court Room No. 2, Wayne County
 Court House, Honesdale, Pennsylvania.

A P P E A R A N C E S

UPON BEHALF OF COMMONWEALTH: GREGORY L. ABELN, ESQ.

UPON BEHALF OF DEFENDANT: RANDOLPH T. BORDEN, ESQ.

I N D E X

WitnessDirectCrossDefendant's Evidence

Sheriff William Bluff

2-5

CERTIFIED FROM
THE RECORD

APR 14 1987

PROTHONOTARY & CLERK

Lawrence H. Miller
Sept 8

2.

MR. ABELN: Your Honor, Steven Romansky is appearing here with his counsel, Mr. Randy Borden, for sentencing, and I would like to make my remarks at the conclusion of Mr. Borden's remarks.

THE COURT: Well, I guess it doesn't make any difference who goes first. First of all, let's take care of the Pre-Sentence, have you reviewed that with your client?

MR. BORDEN: Yes, I have, sir.

THE COURT: Any corrections or additions that you would like to make?

MR. BORDEN: Yes, there is a reference to the fact that Steven Romansky was arrested for Aggravated Assault and Resisting Arrest, and that charge is pending. I would like the record to reflect the fact that that charge is no longer pending. It was nolle-prossed by the District Attorney of Pike County.

THE COURT: Alright, is there anything that you or your client would like to say?

MR. BORDEN: Your Honor, I would like to call one witness, please.

THE COURT: Sure.

MR. BORDEN: Sheriff William Bluff.

SHERIFF WILLIAM BLUFF, CALLED AND SWORN,

DIRECT EXAMINATION

BY MR. BORDEN:

Q Please state your name.

A William M. Bluff.

Sheriff Wm. Bluff- Direct 3.

Q Mr. Bluff, are you here today pursuant to a subpoena?

A Yes, sir, I am.

Q And, that subpoena was issued by my office?

A Yes, it was.

Q Mr. Bluff, you currently have a position with the County of Wayne, do you not?

A Yes, sir.

Q What is that position?

A I am the Sheriff and Warden of Wayne County.

Q How long have you served in that capacity?

A Seven (7) years.

Q Has Steven Romansky been incarcerated in the Wayne County Jail since September 14th of 1986?

A I believe it is February.

Q I am sorry, February 14th?

A I believe February of '86.

THE COURT: Correct.

Q And, during the past twelve (12) months have you had the opportunity to observe Steven Romansky as an inmate?

A Yes, sir.

Q Would you briefly describe for the Judge his conduct as an inmate in your prison?

A Well, he has never had any demerits registered against him for misconduct.

Q Go ahead. Has he been cooperative?

A Yes, sir.

Sheriff Wm. Bluff- Direct

4.

Q Has he listened to you?

A Yes.

Q When he has been instructed by you or a member of your staff to perform a task or do something, has he done that?

A Yes, sir.

Q Has he ever threatened you in anyway?

A To my knowledge, no.

Q Has he threatened anyone else in the Jail?

A Not to my knowledge.

Q Has he volunteered for projects?

A Yes, he has.

Q What kinds of projects has he volunteered for?

A We have a difficult time washing the smoke and filth from the inside of the prison block, the windows which are twenty-five, thirty feet from the floor, and we get a ladder, the inmates hold it, and he goes up and washes the windows.

Q Did he volunteer to do that?

A Yes, sir.

Q What about other service projects, painting and things like that?

A He and another inmate were instrumental in scrapping down and repainting thirty-one (31) shutters for Bethany Library this past Summer.

Q During the period that you have known Steven Romansky, over the last, almost a year now, has he been honest and truthful with you?

A To my knowledge.

Sheriff Wm. Bluff- Direct 5.

MR. BORDEN: I have nothing further, sir.

MR. ABELN: No cross examination.

THE COURT: And, you were here under subpoena, sir?

WITNESS: Yes, sir, I am.

THE COURT: Thank you.

MR. BORDEN: Your Honor, we have no further witnesses, however, I would like to make a statement to the Court.

THE COURT: Proceed.

MR. BORDEN: Thank you, sir.

At the offset, Your Honor, the defense believes that the crimes for which the Defendant has been found guilty merge for the purpose of sentencing. We believe that is true for two different reasons.

First, we believe that the crimes of Reckless Burning or Exploding and the crimes of Causing or Risking a Catastrophe merge because they include the same elements.

Those elements are recklessness, the element of fire, and three, damage of potential damage.

Our research reveals that because these charges are somewhat unique that no Court has ruled as to whether these two particular counts merge or one is a lesser included offense of the other because of the similarity of elements. As a consequence we believe that this question is one of first impression for Your Honor.

THE COURT: Are we here to do this now?

MR. BORDEN: I believe so, Your Honor. I be-

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lieve that I have to raise the issues of merger at the time of sentencing.

THE COURT: Alright.

MR. BORDEN: If, Your Honor, finds that those two particular crimes do not merge because of the similarity of the elements involved we believe that the crimes of Reckless Burning, Risking a Catastrophe and Tampering with Evidence do merge for the purpose of this sentence under the doctrine of the Simple Act Doctrine.

To support this position we have previously provided the Court with several cases on this particular issue. In addition we would point to the case law cited in Commonwealth v. Franklin, and the citation to that is 306 Pa. Super 422, a recent decision by the Pennsylvania Superior Court. In that case the Defendant stood before a Judge such as yourself and he was charged with the crimes of Burglary, and Criminal Trespass. The Superior Court found that those two (2) crimes do not merge because of the similarity of elements and thus it was proper for those counts to go to the Jury, and, indeed, the Defendant could be found guilty on those two (2) separate counts, but when it came time for sentencing the Superior Court ruled that the crimes do merge under the Single Act Doctrine. The test as announced by the Franklin Court is as follows: "In merger of sentence cases we focus primarily on the facts that were proved at Trial for the question is whether those facts showed that impractical effect that the Defendant committed a single act in

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which case there will be a merger, and only a single sentence may be imposed" That quote is at Page 806.

In Commonwealth Vs. Linski, the citation to which is 400 At2nd, 184, the question was, do the crimes of arson, and this was the closest case that we could find to Mr. Romansky's case, do the crimes of Arson and Criminal Mischief merge. In that particular case the Court said that they do not merge in similarity of elements, but when it comes time for sentencing but one sentence can be imposed. In stating that the Court said, "In our present case, although there were various consequences to various victims the consequences derive from a single act or transaction, specifically, the burning of the barn, which may be the basis of various charges, but ultimately of only one (1) sentence."

In Mr. Romansky's case there was but a single act, the burning, or should I say, attempted burning of the evidence. As a result it is the Defense's position that these three (3) crimes merge for the purpose of this particular sentence.

Having stated the Defense's position the question becomes what sentence is appropriate for Steven Romansky. That determination is going to be made by Your Honor. Your task, as a Sentencing Judge, is far from an easy one. On the one hand, you have the Defense Counsel, who is pleading for leniency, and on the other hand you have the Attorney General, the Assistant Attorney General, the State Police, clamoring for maximum sentence time. As, Your Honor, knows

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one of the things, and, perhaps, one of the most difficult things, is to stand apart from the two factions. After listening to what each of us ^{has to} say to dispense with the emotion which is a natural part of a lengthy investigation and a long protracted Court battle, and to impose a sentence which objectively reflects what the Defendant deserves to receive under the Law.

What I hope to be able to point out are some of those objective factors to assist you in carrying out that difficult task.

First factor, has the Defendant been punished? I don't believe that anyone would disagree that, yes, he has. Steven Romansky was incarcerated on February 14th, 1986. Within a four (4) day period he will have forfeited a year of his life for he will have been in Jail for a period of one (1) year. I need not tell Your Honor that within that four (4) day period he will have already fulfilled the minimum range under the Sentencing Guidelines. In addition to being incarcerated Steven Romansky has lost a lot more than that. Because he couldn't work, because he had to pay the cost of trying to prove that he was innocent Steven Romansky is now broke. Steven Romansky has lost the Roofing Business that he worked so hard for so many years to build up. His wife who worked as bookkeeper at that business has lost her job and now must fare it out a wage as a waitress, the minimum standard of living.

Steven Romansky and his family have lost their

home. For fourteen (14) years they lived in the Lake Wallenpaupack region and paid the rent. Because Steven can't work they have lost the house and Mrs. Romansky and the children are now forced to move in with Steven's parents.

Has Steven Romansky been punished, indeed he has.

A second factor, has Steven Romansky demonstrated that he can be a productive member of our community? I believe that no one will question that he has done that. As the Pre-Sentence Report indicates Steven Romansky is married, and he has two children. He has been married for the period of fourteen (14) years.

As I indicated to you, he has established his own business and has been consistently employed, and as that Pre-Sentence Report indicates Steven was a hard worker and had a reputation as an honorable dependable businessman.

Certainly, Steven Romansky is not the type of individual who all too frequently comes before Your Honor. The individual who has the juvenile record, the individual who has been constantly in trouble with the law. Up until this point in his life Steven Romansky certainly was a hard working individual, a married man and a stable member of the community.

Steven Romansky is the opposite of the criminal that normally comes before this Court. Much has been said in this particular case, Judge, about the tapes that were recorded by Thomas Smithers and the indirect threats that

10.

appear upon those tapes, which the State Police are lead to conclude that Steven Romansky is a dangerous individual. The only reason I raise that is that it was addressed in the Pre-Sentence.

The question is, is that conclusion based upon the objective criteria, information we know about Steven Romansky?

The first thing, I would say is, "Let's look at the criminal record of Steven Romansky." Does he have a history of violent acts? The answer to that question is, "No."

Second, what do the neighbors think about Steven Romansky? Fortunately, the Probation Department took the time to find out and interviewed the neighbor, the neighbor of fifteen (15) years and that neighbor reported, "We have never known him to be dangerous or abusive," and that person felt he was hard working and a caring family provider.

Thirdly, the facts that we know, and that fact that they proved what was said, on that day in January of 1986, proved that Steven Romansky at best, when he made those statements can be classified as a "bag of wind". Those statements were made in January of 1986. The arson in this case occurred in September of 1984. Did Steven Romansky do anything to make us believe that we should take those boasts with any "grain of salt"?, and the answer to that is, "No."

You might recall, Judge, Trooper Moschowsky testified that the fire in this particular case was a "flash fire".

11.

It took a matter of seconds, a matter of minutes at the most. Certainly, if Steven Romansky was there, and I will point out that he always said that he wasn't, he was innocent in this case, but if he was, Steven Romansky knew that fire was a failure. He knew the fire was a failure in September of 1984 yet subsequent to that date we have no second attempt to turn that fire into a reality.

In addition, we have no indication that Steven Romansky wrote letters to the State Police threatening them, called the State Police threatening them. We have no evidence that Mr. Romansky went out and bought a gun, bought a weapon or anything like that. We have no evidence that Mr. Romansky committed any type of assault since September of 1984.

What did Steven Romansky do after the fire, assuming that he was there, he went back to work. He didn't carry out any of those threats that he was supposed to to his friend at that time.

Your Honor, has heard the testimony of Sheriff Bluff. Sheriff Bluff has indicated that over the past year Steven Romansky has been cooperative, he has done what he has been ask to do, he has volunteered and he has done community projects. This is the type of individual who the State Police would make you believe is a revengeful type person. I suggest that facts, as we know them suggest to you the contrary.

Your Honor, considering his prior record, what his neighbors say about him, his conduct after September 25th,

12.

1984, and his conduct while in prison, suggest that the remarks that have been so blown out in proportion in this particular case are in fact meaningless.

Now, I know, or I can suggest what Mr. Abeln is going to say when he gets up here, because we have been in Court too many times before, and he is going to get up, and he is going to say, "Your Honor, the Defendant, in this case, Steven Romansky, intentionally went up to the Honesdale Barracks and set a fire for which he deserves to be punished."

The purpose of this sentencing, we don't disagree with that, but the issue is when does the punishment stop, when does the rehabilitation, and the ability to join your family begin? I ask, Your Honor, as I know you will do, to stand back, dispense with the speculation, the rumor, and, indeed, the pressure, and to pass sentence on Steven Romansky upon the objective facts as we know them.

Steven Romansky committed a crime; Steven Romansky has been punished. Prior to this point in his life, he had a family, he had a business and he worked hard in the community.

Since the date of his incarceration he has served as virtually a model prison.

Your Honor, I ask for leniency in this case, not for the sake of leniency in and of itself, but because the facts warrant it.

Thank you. I do not know if Mr. Romansky has anything to say to the Court or not. Mr. Romansky, you have

13.

the opportunity to address Judge Conway at this time. If you would like to.

MR. ROMANSKY: The only thing that I would like to add is that I would like to listen to the tapes myself. If I may?

THE COURT: I am not going to allow it now that you sat during a Trial and heard them provided, and the Jury. If you would like to say something that would be favorable to you, I assume that is what you want to say, and I would be very happy to hear it now.

MR. ROMANSKY: The only thing that I would like to do is to listen to the tapes because when the time is done and over with, I would still like to come back and start again.

THE COURT: Well, I will consider them, I recall what the tapes said, I will consider that.

MR. ROMANSKY: Thank you.

MR ABLEN: Your Honor, Mr. Romansky was found guilty of Arson & Related Offenses, Reckless Buring or Exploding, Causing or Risking a Catastrophe and Tampering With Evidence. He was acquitted of the first charge, Arson and Endangering Persons, and after Post Trial Motions the Court found that Arson and Endangering Property was not established to the Court's satisfaction, and in dealing with the issue of merger, Your Honor, I would, first, suggest to the Court that this is not a case for merger, there is three (3) different things that are determined as to whether the charges merge,

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and it has been clear in the Appellate Courts that if Mr. Romansky was standing here today facing the charges of Arson and Endangering Property, and Arson, Reckless Burning and Exploding, those two (2) charges would indeed merge, because they are of the same degree and are underneath the same statute.

We have three (3) separate statutes here, and there were three (3) separate purposes that were established at Trial, and there are three (3) tests for whether or not charges should merge, and Mr. Borden correctly said that whether one crime necessarily involves another, and that is whether the essential elements of one must be the essential elements of the other.

I suggest to the Court that the essential elements of all three (3) of these are totally different. Mr. Romansky was convicted of Arson, Reckless Buring and Exploding for placing the personal property of the other people owning the cars, having a value of \$5,000.00 or more in danger of damage or destruction. That was properly established by all the facts at Trial.

He was also charged with Causing or Risking a Catastrophe, and was convicted of Risking a Catastrophe, which under Subsection (b) says that if he recklessly creates a risk of catastrophe in the employment of fire or other dangerous means.

Now, the catastrophe didn't include just the

15.

burning of the cars. The catastrophe was, what could of happened to that entire area around the State Police Barracks at the time that this fire occurred. There was sufficient facts established at Trial that the Jury believe that and they found him guilty of such.

The charge of Tampering With Physical Evidence was, again, established by facts too, in that he had his own car put into this impounded lot, and the fire trail lead directly up to this car, and it was the only car where there was gasoline stashed inside the car. All of which established the separate facts.

Your Honor, another test is, again, on whether the merger should be considered is whether the gradations are the same, and in this case the gradations for Reckless Burning or Exploding is a Felony of the Third Degree, and Causing or Risking Catastrophe is also a Felony of the Third Degree, and I suggest, Your Honor, that that is not even an issue here, and that in (b) there would not be any case law on this.

Now, in getting to the sentencing itself, Your Honor, I have to suggest that by reviewing the guidelines, they are published by the Pennsylvania Legislature, we see that Causing or Risking a Catastrophe, Arson, Reckless Burning or Exploding and Tampering With Evidence together provide a maximum total of sixteen (16) years incarceration, and Thirty-five thousand (\$35,000.00) Dollars fine. The offense gravity score for the Felony Threes or Fours, and the Tam-

16.

pering of Evidence is a Misdemeanor of the Second Degree, and has an Offense Gravity Score of two (2).

Now, it is my position that this crime that occurred, and these crimes for which he is convicted, are of the most serious in heinous nature of any of the charges that I have brought against any individuals since I have been Prosecutor. I would like to request the Court that the Court consider deviating from the Sentencing Guidelines and imposing the maximum possible punishment on this Defendant.

It is clear from the Appellate Courts that the Court may deviate from the Sentencing Guidelines and go above the aggravating guidelines if it simply provides a written statement of his reasons for doing so at the conclusion of the sentencing.

To determine your alternatives, Judge, and to determine whether this is mitigating, aggravating or even to exceed the guidelines, the Courts have also said that you have to take a look at three (3) basic things. The rehabilitative need for the Defendant, the gravity of the offense as it relates to the impact on the life of the victims, and the community wherein the crime was committed, and, finally, for the protection of the public.

You certainly have a lot of latitude, and the Courts have also said that when you inquire into the personal character and circumstances of the Defendant, you have to consider the Defendant's potential for rehabilitation,

17.

and that is, basically, classified under Manifestation of Social Conscience accepting responsibility for the criminal acts through contrition and repentance as observed through cooperation with the law enforcement authorities. In all three (3) categories, Your Honor, Steven Romansky has failed in any consideration along those lines. He has not shown the manifestation of social conscience, and, indeed, quite the opposite, I believe, and I would like to read one portion of the tapes that were read to the Jury at Trial just to give an illustration of this particular Defendant's attitude toward other people, and authority in general. He has never accepted responsibility for what he has done. He has shown no contrition, and he had an opportunity to speak to you today to ask for mercy and show that he is, indeed, sorry for what he has done.

All along, even with his discussions with the Probation Department, with the Police, and with anybody else, he has totally denied his activity, and, in fact, has blamed other people and claimed a conspiracy against him. There has been no cooperation with law enforcement authority with anything that I have offered him or anybody else.

Your Honor, it seems to me that when a person makes statements such as this, when Smithers said to him, "What about the fire, I think that is another thing that you are 'pissed off' about?" "Well, too bad, I ain't even fucking started to slap them in their faces. When I am done, fucking, slapping them they won't have nothing to drive. I know where

18.

everyone of them "mother fuckers" live. I know everyone of their kids, where the fuck they go to school, what time they getup in the morning, I know all that." I could read other portions of that about his threats towards the police officers, towards doing other damage to other areas, and I suggest that this esclates the value of this crime beyond all imagination.

Now, Your Honor, the aggravating circumstances rationale is certainly one of the severity of the offense. In that category there is no question that his going into the State Police Barracks and setting this fire was an attack on authority. It was designed premeditatively and with malice and forethought to destroy the evidence that we were going to use against him in a case in Pike County for the theft of cars that he had. It was designed not only to blow up his car, but to blow up the cars to the right and to the left, and, finally, it was based on revenge. This individual has repeatedly given and made statements about that in that regard, Your Honor, and I think the Court has to take that into consideration in giving him a sentence today.

As I mentioned before, there is no admission of guilt and then there has been this threatening behavior. It would seem to me that under the aggravating circumstances that that would give him one and one-half (1 1/2) year, that would be twelve (12), I believe, to eighteen (18) months category for each of the Felony Three (3), and a one (1) year

19.

category for the Tampering With Evidence charge giving him, giving him a possible sentence under the Aggravated Range of four (4) to eight (8) years. However, as I indicated the maximum total for this sentence is sixteen (16) years and Thirty-five thousand (\$35,000.00) Dollars for all three.

I would suggest that the records replete with this type of behavior and this type of threat, and I think the crime itself is so severe that it should fall outside this offense gravity score of four (4).

Your Honor, I would highly suggest that this individual be sentenced to the maximum possible punishment and give a maximum possible fine.

THE COURT: Mr. Romansky, I have reviewed several times the seven (7) page Pre-Sentence Investigation Report. I have taken into consideration that you have had one prior arrest back in '83, Criminal Trespass, for which you were given a probationary period of time. I do note, but I do not take into consideration that you are awaiting sentence in Monroe County and I believe that you are awaiting trial in Pike County, am I correct on that?

MR. BORDEN: That is correct, sir.

THE COURT: I do remember the tapes, and they were certainly not favorable to you at all, and you said them?

MR. ROMANSKY: Yes, sir.

THE COURT: And the crime that you are charged with, it was lucky that no one was hurt, let me put it that

20.

way. It was premeditated, it was planned, but the execution wasn't good enough as far as you were concerned. You do have a decent family background, so, I am going to stay within the guidelines.

As to Count No. 3, Recklessly Burning or Exploding, it is the Sentence of this Court that you STEVEN L. ROMANSKY pay the costs of prosecution, undergo imprisonment in a State Correctional Institution for a period of not less than one and one-half (1 1/2) years nor more than four (4) years.

Count No. 4, Causing or Risking a Catastrophe, it is the Sentence of this Court that you, STEVEN L. ROMANSKY, pay the costs of prosecution, undergo imprisonment in a State Institution for a period of not less than one and one-half (1 1/2) years nor more than four (4) years, to run consecutively with Count No. 3.

Count no. 5, Tampering With Evidence, it is the Sentence of this Court that you, STEVEN L. ROMANSKY, pay the costs of prosecution, undergo imprisonment in a State Correctional Institution for a period of not less than one (1) year nor more than two (2) years, to run consecutively with the two (2) prior counts.

So, it is a total of four (4) years, the maximum under the guidelines. I have stayed within the guidelines, but barely. Obviously, I do not agree that they merge.

MR. ABELN: Did you consider a fine in this mat-

21.

ter, Your Honor?

THE COURT: I think with four (4) to eight (8) years that is ridiculous.

MR. BORDEN: Your Honor, credit for time served, sir?

THE COURT: Certainly, that is the law.

MR. BORDEN: Thank you.

MR. ABLEN: I will be happy to read him his rights, Your Honor.

THE COURT: I will take care of that.

You have the right to file motions challenging the propriety of the sentence imposed, and since you were sentenced you may challenge the validity of that sentence within ten (10) days of today. You are further advised that you are entitled to the assistance of counsel in the preparation and presentation of these motions and if you cannot afford one, counsel will be provided for you at no expense to you.

I am also advising you that you have the right to appeal these proceedings to the Superior Court of Pennsylvania within thirty (30) days of today. Again, you are entitled to the assistance of counsel in the preparation of this appeal and if you cannot afford one, counsel will be provided for you at no expense to you.

Finally, I am advising you that only such claims which were first raised in this Court may be raised on any appeal to the Superior Court.

Do you understand?

MR. ROMANSKY: Yes.

THE COURT: O'kay, I hope that you will take these next four (4) years to straighten out your life or your future.

MR. ABELN: Thank you, Your Honor.

MR. BORDEN: Thank you, Your Honor.

HEARING ENDED AT 11:25 A.M.

REPORTER'S CERTIFICATE

I hereby certify that the above is a true and correct transcript of the notes of testimony taken by me at hearing held in the said cause.

/S/Lois H. Brown

Lois H. Brown,
Official Court Reporter
22nd Judicial District
Court House
Honesdale, Pennsylvania 18431

O R D E R

The foregoing notes of testimony taken at said hearing are hereby approved and directed to be filed.

/S/ Robert J. Conway

Robert J. Conway,
President Judge

DATE: April 13, 1987